

**Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)**

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REQUEST FOR RULEMAKING (RFR)

1. Department:

Environment, Great Lakes and Energy

2. Bureau:

Remediation and Redevelopment Division

3. Promulgation type:

Full Process

4. Title of proposed rule set:

Cleanup Criteria Requirements for Response Activity

5. Rule numbers or rule set range of numbers:

R 299.1 - R 299.50

6. Estimated time frame:

12 months

Name of person filling out RFR:

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

The general purpose of the Cleanup Criteria Requirements for Response Activity rules is to provide a framework for the development of residential and non-residential generic criteria and site-specific criteria for hazardous substances necessary for the evaluation of exposure risks and to implement the requirements for response activities and corrective actions under Part 201, Environmental Remediation, and Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, Act 451 of 1994, as amended, respectively. Pursuant to MCL 324.20120a, EGLE is required to evaluate and revise the cleanup criteria derived under that Section. The evaluation must incorporate knowledge gained through research studies in the areas of fate and transport and risk assessment of hazardous substances and shall take into account best practices from other states, reasonable and realistic conditions, and sound science. As a result of the August 3, 2020, promulgation of State Drinking Water Standards (SDWS) for seven per- and polyfluoroalkyl substances (PFAS) under Supplying Water to the Public (R 325.10101 – 325.12820) and section 5 of the Safe Drinking Water Act, 1976 PA 399 (MCL 325.1005), the department intends to develop and promulgate generic cleanup criteria for groundwater used for drinking water for these PFAS pursuant to MCLs 324.20120a(5) and 324.20120a(23).

Contaminant	SDWS MCL (ng/L)	Chemical Abstract Services Registry Number (CASRN)
Perfluorononanoic Acid (PFNA)	6	375-95-1
Perfluorooctanoic Acid (PFOA)	8	335-67-1
Perfluorooctane Sulfonic Acid (PFOS)	16	1763-23-1
Perfluorohexane Sulfonic Acid (PFHxS)	51	355-46-4
Hexafluoropropylene Oxide Dimer Acid (HFPO-DA) (a GenX compound)	370	13252-13-6
Perfluorobutane Sulfonic Acid (PFBS)	420	375-73-5
Perfluorohexanoic Acid (PFHxA)	400,000	307-24-4

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

EGLE shall promulgate, modify, or revise all generic cleanup criteria under MCL 324.20120a(17), 324.20120a(23), and may promulgate rules under MCL 324.20104(1). Under Executive Order 2011-1, Delegation Letter RRD-201-02, the authority to promulgate administrative rules under MCL 324.20104(1) is reserved for the director.

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

MCL 324.20104(1), MCL 324.20120a, MCL 324.20120e(1)(a), Executive Order 2011-1, Delegation Letter RRD-201-02 (August 28, 2013)

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

MCL 324.20120a(17) mandates that the department shall promulgate all generic cleanup criteria and target detection limits as rules. MCL 324.20120a(23) requires that new generic cleanup criteria that are published pursuant to this subsection take effect and are legally enforceable when published by the department if the department also initiates rule-making to promulgate rules for the new criteria within 30 days.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

These rules do not duplicate or conflict with any other state rules. There are no promulgated federal cleanup criteria.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

No

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

Yes

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

The process to develop the residential and non-residential generic cleanup criteria for groundwater used for drinking water for the seven PFAS compounds relies on the SDWS that were promulgated on August 3, 2020. Based on a comparison of state, regional, and federal regulations, compliance requirements, screening levels, or other adopted standards and guidance values for PFAS in groundwater or drinking water, only Massachusetts (PFHxS), Vermont (PFHxS and PFOS), New York (PFOS), New Hampshire (PFHxS and PFOS), Texas (PFHxA), North Carolina (GenX), New Jersey (PFOS), Minnesota (PFOS and PFHxS) and California (PFOA and PFOS) have values for drinking water or groundwater protection that are lower than the promulgated SDWS. Without a complete understanding about how each state's various values are applied to implement their programs, it is difficult to make a direct comparison.

(Source: October 2020 Interstate Technology Regulatory Council)

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

No

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

In 2017, the existing rule set was evaluated relative to establishing Part 201 residential and nonresidential generic cleanup criteria for groundwater used for drinking water for PFOA and PFOS. In accordance with the existing rules at that time, the department used best available information about the toxicological and physical-chemical properties of the PFOA and PFOS substances and adopted by publication in 2018 the United States Environmental Protection Agency Drinking Water Health Advisory values of 70 parts per trillion for PFOA and PFOS. On March 26, 2019, Governor Whitmer directed Michigan PFAS Action Response Team (MPART) to form a Science Advisory Workgroup to review both existing and proposed health-based drinking water standards from around the nation to inform the rulemaking process for appropriate Maximum Contaminant Levels (MCLs) for SDWS for PFAS. As a result of the MPART study, SDWS for seven PFAS were adopted under Supplying Water to the Public (R 325.10101 – 325.12820) and the authority of section 5 of the Safe Drinking Water Act, 1976 PA 399, (MCL 325.1005).

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

No

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

No