

Office of Drinking Water Public Comment Responses

Same Farm Exemption Policy A.09 (Revision 2025)

Table I: Support of draft policy changes and questions

	Summary of Comments Received	Department of Health Response
1	I encourage the Washington State DOE's Office of Drinking Water to adopt its draft "Same Farm Exemption A.09," dated February 29, 2024. In Washington state, a landlord's obligation to provide a habitable living space is spelled out in RCW 59.18.060 . Safe drinking water is unquestionably a condition of the warranty of habitability, which binds all Washington State landlords. Allowing farmer landlords to evade this requirement invites both health and legal liability.	Thank you for your interest and support of this policy revision. The Same Farm Exemption (SFE) policy does not exempt any landlord obligations under RCW.
2	How do commercial connections tie into the eligibility requirements for the SFE (Same Farm Exemption)? How are connections counted and do the internal components identify what is a SFR (Single Family Residential)?	The SFE is granted to small systems that do not meet the definition of a Group A public water system. These are meant to be for residences that serve a same farm and not commercial / industrial connections that require domestic water. Commercial and industrial connections, which require domestic water, would change the type of system that is being proposed.

Table II: Opposition or concerns to draft policy changes

	Summary of Comments Received	Department of Health Response
1	The department does not have the authority to change this policy. They should either go through a formal rulemaking process or work with the Legislature on any changes to the exemptions since they passed the same farm exemption law.	<p>The Department of Health has the authority to adopt policy and interpretive statements under chapter 34.05 RCW.</p> <p>An agency's written expression of its interpretation of the law does not implement, change or enforce the law and is "advisory only." RCW 34.05.230(1); <i>Washington Educ. Ass'n v. Washington State Pub. Disclosure Comm'n</i>, 150 Wn.2d 612, 619, 80 P.3d 608, 611 (2003). The issuance of interpretative statements is not governed by formal adoption procedures-there is no need for formal procedures because</p>

		such advisory statements have no legal or regulatory effect. A person cannot violate an interpretive statement, and conduct contrary to the agency's written opinion does not subject a person to penalty or administrative sanctions. Washington Educ. Ass'n v. Washington State Pub. Disclosure Comm'n, 150 Wn.2d 612, 619, 80 P.3d 608, 611 (2003)
2	Bypassing the standard rulemaking process would also allow Department of Health (DOH) to avoid responding to public comments and concerns and provide justification for the new rules or regulations as required when agencies propose changes.	RCW 34.05.230 (1) states “An agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only.” The Department has the capacity to update policies to reflect clear and direct interpretation of statute and rules. Formal updates to statute and rules was requested by Environmental Protection Agency (EPA); the Department anticipates this work beginning in 2026. However, due to intent to be transparent and deliberate in this update, we have followed formal processing beyond what is required for policy work.
3	It could be costly and burdensome, particularly to our small farms who are already struggling. This would also put farms with employees living onsite in a very difficult situation.	We are working closely with our Office of Environmental Health and Safety Transient Accommodations program to be clear with temporary worker housing (TWH) and transient accommodations regulations with respect to providing drinking water to agricultural workers.
4	We believe the proposal misinterprets the law, misconstrues the Legislature's intent in adopting the law, and is vague and will necessitate future legislation to address these issues.	The requirements for a public water system are outlined in chapter 70.114A RCW and chapter 246-358 WAC for TWH. Group B or Group A requirements apply to all TWH in order to be permitted in WA state.
5	The proposed changes are much more than advisory and belong in a legislative proposal or rule-making proposal, not a policy statement. RCW 34.05.230 states that policy statements are only to be advisory.	The formal revision to change the definition of Public Water System in RCW 70A.125.010 to be as stringent as the federal definition was formally requested by EPA.
6	The policy should read that the exemption applies to water systems with four or fewer residential connections to ensure that farms with connections to shops or to barns for stock-watering or for other non-drinking uses will not be subject to	The exemption only applies to residential connections, not shops, stock water or commercial use.

	the reporting requirements.	
7	The Department of Health does not have staff or a budget to process affidavits for every farm exemption every five years. Contact with the Department should only be required when something has changed – ownership, amount of usage, etc.	This work will be incorporated into work already being completed by staff in our regional offices related to Water Facilities Inventory (WFI) updates and data entry staff.
8	We fear that the agency’s actions by making this policy more restrictive will simply continue to hamper the availability of affordable housing to working people in this state. Policy statements should be restricted to their statutory authorization.	This policy has no impact on the implementation of RCW 43.70.335 for temporary worker housing. An agency's written expression of its interpretation of the law does not implement, change or enforce the law and is “advisory only.” RCW 34.05.230(1).
9	Please consider removing the requirement for maintaining the same farm exemption and clarify that water connections other than residential connections will not be affected by this policy.	This was considered but the draft policy was not changed. The Same Farm Exemption only applies to Group B water systems, regardless of the type of connection.
10	This change has the devastating potential of jeopardizing up to 200,000 homes throughout the state. Many of those homes include farmers and farm workers who rely on the security and stability of this housing.	This policy has no impact on the implementation of RCW 43.70.335 for temporary worker housing. An agency's written expression of its interpretation of the law does not implement, change or enforce the law and is “advisory only.” RCW 34.05.230(1).
11	The draft policy makes water system owners sign affidavits and submit updated Water Facilities Inventory forms every five years, adding more hassle for those who should be exempt. Questions about the cost of these new requirements and whether DOH even has the authority to enforce them.	The Department appreciates your comment. Having the affidavit submitted every 5 years ensures that these farms still meet the requirements for the same farm exemption. The Department of Health has the authority to adopt policy and interpretive statements under chapter 34.05 RCW. The Department does not anticipate any additional costs for water systems that are eligible for the same farm exemption (SFE).
12	Encourage the DOH to correct the errors in the 1995 policy statement but refrain from creating additional eligibility requirements beyond what the legislature defined.	An agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. (RCW 34.05.230). DOH has the capacity to update policies to reflect clear and

		direct interpretation of RCW and WACs. Formal updates to statute and rules were requested by Environmental Protection Agency (EPA); the Department anticipates this work beginning in 2026.
13	Do not implement this action. Too costly and time consuming for small farms. Explain better the size and meaning of “Small Farm”, leave them exempt.	Farms meeting SFE are not subject to public water system regulations. Water systems are defined by the population served and the period of time they are served. The SFE applies to systems meeting the definition of a group B water system (WAC 246-291) if they have fewer than 4 residential connections. To meet the exemption, the system must serve less than 25 people and have fewer than 4 residential connections. The connections must be residential in nature and not exceed 4. Having the affidavit submitted every 5 years ensures that these farms still meet the requirements for the same farm exemption. The Department does not anticipate any additional costs for water systems that are eligible for SFE.
14	Strong opposition to DOH’s efforts to revisit the SFE.	This is the Department’s initial response to a request from US EPA to meet federal Safe Drinking Water Act regulations.
15	Potential of jeopardizing 200,000 homes, including homes used by farmers and farm workers as affordable housing. Concerned with the process being used by DOH to make changes to the policy that go beyond what the law states.	<p>We are working closely with our Office of Environmental Health and Safety Transient Accommodations program to be clear with temporary worker housing (TWH) and transient accommodations regulations with respect to providing drinking water to agricultural workers.</p> <p>This is DOH’s initial response to a request from US EPA to meet the federal Safe Drinking Water Act regulations.</p>
16	Including restrictions on what is supposed to be a clear exemption. People’s rights may be impacted by sharing these restrictions with County Planning Depts.	Formal updates to statute and rules was requested by EPA. This is the Department’s initial response to a request from US EPA to meet the federal Safe Drinking Water Act regulations.
17	Requires submittal of affidavits and WFI’s every 5-years is a hassle for exempt systems. Encourages updates to 1995 Policy and refrain from creating additional eligibility requirements.	In those cases where the health department has accepted the responsibility of implementing the Group B regulations the procedure is being formalized to make the submittals consistent with the process adopted by the state. The affidavit and WFI with a 5-year renewal date is to ensure the system has not changed or increased to meet the definition of a Group A or

		a permitted use that now requires an approved public water system.
18	Added the confusion with our intentions, and in these types of cases it is required we educate the public.	The proposed changes to the policy were identified as necessary to clarify the definition of a water system that serves a same farm. This includes the total population served and total number of connections.
19	<p>Urges DOH to table the proposed policy. Primarily work with TWH.</p> <p>The definition of “public water system” is found in RCW 70A.125.010 (12), provides an exemption “a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm....”. The language from the first paragraph of your proposed policy stands in stark contrast to state statute. “...These include water systems that have four or fewer connections, all of which serve residences on the same farm. These water systems are excluded from the definition of a “Group B public water system” under RCW 70A.125.010 (12), and all the connections must serve a single-family residence, as defined in WAC 246-291-010 (62) and consistent with WAC 246-290-010 (215).”</p> <p>Policy attempts to place additional requirements on the SFE, including the mandate to submit an affidavit by the property owner to claim the SFE.</p>	The SFE is an exemption from Group B Regulations. These are meant to be for residences, and not commercial / industrial connections. SFE water systems are not approved public water systems.
20	Opposed to changes in the policy and does not feel DOH has the authority to make such changes through the policy process.	<p>The Department of Health has the authority to adopt policy and interpretive statements under chapter 34.05 RCW.</p> <p>An agency's written expression of its interpretation of the law does not implement, change or enforce the law and is “advisory only.” RCW 34.05.230(1); <i>Washington Educ. Ass’n v. Washington State Pub. Disclosure Comm’n</i>, 150 Wn.2d 612, 619, 80 P.3d 608, 611 (2003). The issuance of interpretative statements is not governed by formal adoption procedures-there is no need for formal procedures because such advisory statements have no legal or regulatory effect. A</p>

		<p>person cannot violate an interpretive statement, and conduct contrary to the agency's written opinion does not subject a person to penalty or administrative sanctions. Washington Educ. Ass'n v. Washington State Pub. Disclosure Comm'n, 150 Wn.2d 612, 619, 80 P.3d 608, 611 (2003).</p>
21	<p>State law regarding public water systems says nothing about workers/employees, the laws regard persons, or individuals. Change these references to accurately reflect State law.</p>	<p>The intent is to track the population served by the SFE. The population served would include residential and non-residential individuals, which in many cases includes employees.</p>
22	<p>There are more changes than a requirement of a 5-year affidavit.</p> <ul style="list-style-type: none"> • Legislature did not authorize your agency to require the affidavit. • Agency did not request a budget proviso to hire staff to process potentially thousands of these affidavits. • Doubt you have staff currently that can process in a timely manner these citizen requests for exemptions. • Agency does not know how many citizens will be "required" to submit an affidavit. Have not provided any information on the scope of this "requirement". • This is a non-binding policy statement. Do you know how many well owners will simply ignore your edicts and demands? Will your agency inform citizens that these affidavit "requirements" they will be asked to submit every five years are not binding? • Policy statements are advisory only, do you know how effective this program will be? Or is this just an effort to appease EPA by putting this "requirement" in place? 	<p>Proposed changes to the policy were identified as necessary to clarify the definition of a water system that serves a same farm. This includes the total population served and total number of connections. The Department is drafting procedures. The process will be standardized to ensure procedures are consistent statewide for the lead agency implementing Group B program for each county.</p> <ul style="list-style-type: none"> • The affidavit has been in use since the drafting of the policy in 1995. • Additional staff were not requested. • The scope of the work includes issuing and tracking of affidavits, as well as determining the appropriate approved public water system (Group B or Group A) for a site. • Agency is currently working on procedures for identifying whether a system is an SFE or requires an approved public water system. • Same as above. Domestic wells that serve a single-family residence (SFR) would not require an SFE. Shared wells may not require an SFE. Systems with 3 or 4 connections will require an SFE or be determined to be a Group B or A based on the population served. • Same as above. EPA has escalated the work that was being completed on this issue. Our intent is to align with the Safe Drinking Water Act.

	Several of your communications indicate that EPA has – for the past year - pressured your agency into these actions.	
23	Different drafts with the same date are not helpful and confusing.	The Department appreciates the feedback. The draft posted with the request for public comment is the current draft of this policy.
24	Opening draft is erroneous. Specifically, “all the connections must serve a single-family residence,”. Does state that the exemption is for a single-family residence AND a system on same farm with fewer than four residences. Plain reading of state law leads to a conclusion that the exemption is for a single residence but only if it is a single-family residence. Is the Department of Health now going to require any and every single-family well owner to disclose in the affidavit if they rent a room out to a non-family member or if the single family residence is rented out to individuals not from the same family? What if the home is rented out on a monthly or weekly basis or through venues like Air BnB?	The definition of a SFE is limited to 4 connections, and they must be residential in nature on the same farm. The policy language also does not specify or restrict these connections to family or employees of the farm. The SFE is an exemption from the Group B Regulations and does not apply to a system serving only one single-family residence.
25	Agency has not released any cost associated with complying with the policy, including the affidavits or Group B water systems. Including information on those impacted by the changes.	The Department does not anticipate any additional costs for water systems that are eligible for the same farm exemption (SFE).
26	No criteria provided showing eligibility. No agency outline of an appeal process. Have you reached out to the counties to ask how they plan on implementing this policy, including legal, accurate criteria for eligibility and an appeals process?	Proposed changes to the policy were identified as necessary to clarify the definition of a water system that serves a same farm. This includes the total population served and total number of connections. The Department is drafting procedures. The process will be standardized to ensure procedures are consistent state-wide for the lead agency implementing Group B program for each county.
27	Outreach to the counties about impacts.	The Department is drafting guidance and publications to ensure procedures are standardized and consistent state-wide for the implementation of Group B program for each county.
28	Your agency informs county planning departments of such policies. Your agency policy positions are sent to every county	Yes, this is correct.

	planning desk in the state.	
29	When applying for a building permit citizens will need to verify, they meet the same farm exemption, via this policy.	<p>When an application for a building permit is made, the local jurisdictions (Health and Planning), and possibly other permitting agencies, determine whether the proposed building will require an approved public water system.</p> <p>Domestic wells that serve a single-family residence do not require a SFE. Shared wells (two independent SFR) may not require an SFE. Systems with 3 or 4 connections will require an SFE or be determined to be a Group B or A based on the population served.</p>

Table III: Comments outside the scope of this policy

	Summary of Comments Received	Department of Health Response
1	Encourages the adoption of the SFE A.09, 2-29-2024 draft. References the language for employee protections under WAC 296-307-09512 . Employers are required to provide potable water to employees. Non-potable water sources, such as, irrigation systems, domestic wells, etc., an pose acute risks to the worker's health.	Thank you for your interest and support for this policy revision. The SFE is an exemption from Group B Regulations. These are meant to be for residences, and not commercial / industrial connections. SFE water systems are not approved public water systems. Limited cases noted in WAC 246-291 refer to those cases where a local, state, or federal agency require the approval of a public water system.
2	Encourages the adoption of the SFE A.09, 2-29-2024 draft. References RCW 59.18.060 , which outlines a landlord's obligation to provide a habitable living space. Not identified that potable water is included in the "Implied Warranty of habitability".	The SFE is an exemption from Group B Regulations. These are meant to be for residences, and not commercial / industrial connections. SFE water systems are not approved public water systems.
3	Not clear that DOH has the authority or latitude to give farmers an exemption from another agency's regulations.	Limited cases noted in chapter 246-291 WAC refer to those cases where a local, state, or federal agency require the approval of a public water system.



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