



Washington State Board of Health School Environmental Health and Safety Rules

[WAC 246-366](#) PRIMARY AND SECONDARY SCHOOLS (currently in effect)

[WAC 246-366A](#) ENVIRONMENTAL HEALTH AND SAFETY STANDARDS FOR PRIMARY AND SECONDARY SCHOOLS (adopted but not in effect)

Statutory Authority: [RCW 43.20.050\(2\)\(d\)](#) mandates the Washington State Board of Health to “Adopt rules controlling public health related to environmental conditions including but not limited to heating, lighting, ventilation, sanitary facilities, and cleanliness in public facilities including but not limited to food service establishments, *schools*, recreational facilities, and transient accommodations[.]”

The Washington State Board of Health has had some form of school environmental health and safety rules since 1960. Chapter 246-366 WAC Primary and Secondary Rules has been in effect since 1971, the last update to this rule was in 1991. Chapter 246-366 WAC will be superseded by chapter 246-366A Environmental Health and Safety Standards for Primary and Secondary Schools, if the Legislature lifts the suspension of the implementation that has been in each Operating budget since the 2009-11 biennium. The proviso reads:

The department of health and state board of health shall not implement any new or amended rules pertaining to primary and secondary school facilities until the rules and final cost estimate have been presented to the legislature, and the legislature has formally funded implementation of the rules through the omnibus appropriations act or by statute. Section 222, chapter 564, Laws of 2009.

Rule Revision History

The Board initiated rulemaking in response to significant public testimony it received from concerned parents, students and teachers regarding toxic mold, drinking water and indoor air quality. On October 1, 2004, the board filed a CR-101 Statement of Inquiry, as [WSR 04-20-050](#). The Board requested that the Department of Health convene a School Rule Development Committee consisting of representatives from public health, school agencies and organizations parent/teacher associations, parents, and school staff. This committee’s recommendations informed a proposal that was released in 2006, and a second proposal released in 2007. The Department and Board received significant public comment on the drafts and possible costs. The Board convened a second stakeholder group to standardize cost and other assumptions about the proposed rule revisions.

On July 23, 2008, the Board filed its first CR-102 notice of proposed rulemaking as [WSR 08-15-174](#), with an intended date of adoption of September 10, 2008. The Board held two public hearings on the proposed rule. The

first was held on August 27, 2008 in Spokane; the second on September 10, 2008 in Olympia. During the public hearings, the board heard from over thirty individuals.

The Department of Health completed a Small Business Economic Impact statement as required under the Regulatory Fairness Act, [chapter 19.85 RCW](#). The analysis was necessary because the rules affect privately owned schools, which for the purpose of the analysis are considered small businesses. The department also completed a cost-benefit analysis as required under [RCW 34.05.328](#).

On October 8 2008, the Board considered adopting the proposed rule, but decided to defer its decision for adoption until after legislative session to see if the Legislature might fund the rules. In October 2008, the Board sent a [letter](#) to a number of legislative committees explaining the reasons for updating rules, its plan to adopt the rule after the 2009 legislative session, and providing the background and policy implications of the rules.

On January 30, 2009, the Board filed a continuance for the proposed rule as [WSR 09-04-049](#). The continuance identified a new date of intended adoption of March 11, 2009. The Board did not adopt the rule on this date. Instead, it convened a workgroup in February to improve technical clarity of the proposed rule. During the 2009 legislative session, the legislature enacted the budget proviso described above.

On July 1, 2009, the Board filed a supplemental CR102, as [WSR 09-14-136](#) and scheduled another public hearing for August 12, 2009. The supplemental CR 102 acknowledged that implementation of any rules would be restricted by section 222, chapter 564, Laws of 2009.

On Aug. 12, 2009, the Board adopted updated rules, in a new [chapter 246-366A WAC](#), and filed a rule order (CR-103) as [WSR 10-01-174](#), on December 2009, providing an effective date of July 1, 2010 for the new rules.

On March 10, 2010, as the regular legislative session was concluding and no funding was expected to allow implementation of the new rules, the Board voted to delay the effective date of the rules one year. Staff filed an updated CR-103 to establish the effective date for the new rules as July 1, 2011. Because of the continued legislative restrictions on rule implementation, the Board has continued to file revised CR-103 orders of adoption, on April 13, 2011, March 13, 2013, and March 11, 2015. The current tentative effective date of the new rules is July 1, 2017. The existing rules, chapter 246-366 WAC will remain in place until superseded by new provisions of chapter 246-366A WAC.

On May 13, 2015 the Joint Administrative Rules Review Committee met to discuss and review the Board's School Environmental Health and Safety Rule Chapter 246-366A WAC. The JARRC determined that for the purposes of the review: (1) the rules appear to be within the intent of the Legislature as expressed by the statute they implement; (2) the rules appear to have been adopted in accordance with all applicable provisions of law; and (3) the Board does not appear to be using a policy or interpretive statement in place of a rule. At its June 11, 2015 meeting, JARRC approved a report describing its findings and creating a list of multiple options for addressing rules without endorsing a specific option. The options ranged from creating model rules, to authorizing implementation of the rules to taking no action.