RULE-MAKING ORDER
EMERGENCY RULE ONLY

CR-103E (December 2017)
(Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 15, 2022
TIME: 4:22 AM

WSR 22-13-101

Agency: State Board of Health

Effective date of rule:

Emergency Rules

☒ Immediately upon filing.
☐ Later (specify)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: WAC 246-272A-0110, Proprietary treatment products - Certification and registration. Under the current rule, manufacturers of proprietary treatment products used in on-site sewage systems must test their products with the National Science Foundation (NSF) and register their products with the Department of Health (department) based on the NSF test results before the product is allowed to be permitted or installed in Washington. This allows the department to ensure that products used in on-site sewage systems can provide the appropriate level of treatment needed to protect public health and the environment such as drinking water sources and shellfish sites. Proprietary treatment products are required to be installed and operated as they were tested and registered to ensure they continue to perform as needed.

The State Board of Health (board) has amended the existing rule to allow manufacturers to make a written request to the department to substitute components of a registered product's construction in cases of a demonstrated supply chain shortage or similar manufacturing disruptions that may impact installations, operation, or maintenance. The request must include information that demonstrates the substituted component will not negatively impact performance or diminish the effect of the treatment, operation, and maintenance of the original registered product. Supply chain disruptions have made it difficult for manufacturers and owners to comply with the current requirement. For example, some manufacturers have incorporated disinfecting ultraviolet (UV) light systems into their products to achieve higher treatment performance required for sensitive sites. These disinfecting UV light systems require routine maintenance that requires replacement supplies. Salcor Inc., the manufacturer of a disinfecting UV light system incorporated into several proprietary treatment products sold and currently used in Washington, has recently ceased operation. This has created a sudden shortage of Salcor supplies that are needed for operation and maintenance for on-site sewage systems currently in operation. Without these supplies, the on-site sewage systems that use Salcor products do not operate as registered and may not completely treat sewage. This may impact sensitive sites near these on-site sewage systems. This same supply shortage is also currently preventing home sales when maintenance of these devices is noted on home inspections for property transfers because replacement parts are unavailable. New construction is likewise impacted as many active or pending permits include on-site sewage systems using Salcor products. There are other manufacturers of disinfecting UV light systems that can be substituted into the proprietary treatment products that use Salcor products. This emergency rule will allow the department and local health jurisdictions to consider such projects.

In 2018, the board filed a CR-101, Preproposal Statement of Inquiry, WSR 18-06-082, to initiate permanent rulemaking and update the on-site sewage system rules. That rulemaking is still underway and is expected to conclude in 2023. The board has directed staff to consider this emergency rule amendment to WAC 246-272A-0110 to be incorporated into the permanent rule.

Citation of rules affected by this order:

New: None
Repealed: None
Amended: WAC 246-272A-0110
Suspended: None

Statutory authority for adoption: RCW 43.20.050 (3)

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The board finds that in order to protect the public's health, safety, and welfare, it is necessary to adopt an emergency rule to amend WAC 246-272A-0110 to allow the department to consider written requests from manufacturers of proprietary treatment products for substitutes to proprietary treatment product components that will allow systems to continue to function properly without negatively impacting performance or diminish the effect of the treatment, operation or maintenance during supply chain shortages.

Note: If any category is left blank, it will be calculated as zero. No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note. A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	0	Amended	0	Repealed	0
Federal rules or standards:	New	0	Amended	0	Repealed	0
Recently enacted state statutes:	New	0	Amended	0	Repealed	0

The number of sections adopted at the request of a nongovernmental entity:

	New	0	Amended	0	Repealed	0

The number of sections adopted on the agency's own initiative:

	New	0	Amended	1	Repealed	0

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	0	Amended	0	Repealed	0

The number of sections adopted using:

Negotiated rule making:	New	0	Amended	0	Repealed	0
Pilot rule making:	New	0	Amended	0	Repealed	0
Other alternative rule making:	New	0	Amended	1	Repealed	0

Date Adopted: 06/13/2022	**Signature:** 
Name: Michelle A. Davis	
Title: Executive Director	

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

WAC 246-272A-0110 Proprietary treatment products—Certification and registration. (1) Manufacturers shall register their proprietary treatment products with the department before the local health officer may permit their use.

(2) To qualify for product registration, manufacturers desiring to sell or distribute proprietary treatment products in Washington state shall:

(a) Verify product performance through testing using the testing protocol established in Table I and register their product with the department using the process described in WAC 246-272-0120;

(b) Report test results of influent and effluent sampling obtained throughout the testing period (including normal and stress loading phases) for evaluation of constituent reduction according to Table II;

(c) Demonstrate product performance according to Table III. All ((~~thirty-day~~)) 30-day averages and geometric means obtained throughout the test period must meet the identified threshold values to qualify for registration at that threshold level; and

(d) For registration at levels A, B, and C verify bacteriological reduction according to WAC 246-272A-0130.

(3) Manufacturers verifying product performance through testing according to the following standards or protocols shall have product testing conducted by a testing facility accredited by ANSI:

(a) ANSI/NSF Standard 40—Residential Wastewater Treatment Systems;

(b) NSF Standard 41: Non-Liquid Saturated Treatment Systems;

(c) NSF Protocol P157 Electrical Incinerating Toilets - Health and Sanitation; or

(d) Protocol for bacteriological reduction described in WAC 246-272A-0130.

(4) Manufacturers verifying product performance through testing according to the following standards or protocols shall have product testing conducted by a testing facility meeting the requirements established by the Testing Organization and Verification Organization, consistent with the test protocol and plan:

(a) EPA/NSF—Protocol for the Verification of Wastewater Treatment Technologies; or

(b) EPA Environmental Technology Verification Program protocol for the Verification of Residential Wastewater Treatment Technologies for Nutrient Reduction.

(5) Treatment levels used in these rules are not intended to be applied as field compliance standards. Their intended use is for establishing treatment product performance in a product testing setting under established protocols by qualified testing entities.

(6) Manufacturers may make written request to the department to substitute components of a registered product's construction in cases of supply chain shortage or similar manufacturing disruptions that may impact installations, operation, or maintenance. The request must include information that demonstrates the substituted component will not negatively impact performance or diminish the effect of the treatment, operation, and maintenance of the original registered product.

TABLE I

Testing Requirements for Proprietary Treatment Products	
Treatment Component/ Sequence Category	**Required Testing Protocol**
Category 1 Designed to treat sewage with strength typical of a residential source when septic tank effluent is anticipated to be equal to or less than treatment level E.	ANSI/NSF 40—Residential Wastewater Treatment Systems (protocols dated between July 1996 and the effective date of these rules)
Category 2 Designed to treat high-strength sewage when septic tank effluent is anticipated to be greater than treatment level E. (Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)	EPA/NSF Protocol for the Verification of Wastewater Treatment Technologies/ EPA Environmental Technology Verification (April 2001)
Category 3 Black water component of residential sewage (such as composting and incinerating toilets).	NSF/ANSI Standard 41: Non-Liquid Saturated Treatment Systems (September 1999) NSF Protocol P157 Electrical Incinerating Toilets - Health and Sanitation (April 2000)
Total Nitrogen Reduction in Categories 1 & 2 (Above)	Protocol for the Verification of Residential Wastewater Treatment Technologies for Nutrient Reduction/EPA Environmental Technology Verification Program (November, 2000)

TABLE II

Test Results Reporting Requirements for Proprietary Treatment Products	
Treatment Component/Sequence Category	**Testing Results Reported**
Category 1 Designed to treat sewage with strength typical of a residential source when septic tank effluent is anticipated to be equal to or less than treatment level E.	Report test results of influent and effluent sampling obtained throughout the testing period for evaluation of constituent reduction for the parameters: $CBOD_5$, and TSS: □ Average □ Standard Deviation □ Minimum □ Maximum □ Median □ Interquartile Range □ 30-day Average (for each month) For bacteriological reduction performance, report fecal coliform test results of influent and effluent sampling by geometric mean from samples drawn within ((~~thirty-day~~)) 30-day or monthly calendar periods, obtained from a minimum of three samples per week throughout the testing period. See WAC 246-272A-0130. Test report must also include the individual results of all samples drawn throughout the test period.

Test Results Reporting Requirements for Proprietary Treatment Products	
Category 2 Designed to treat high-strength sewage when septic tank effluent is anticipated to be greater than treatment level E. (Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)	Report all individual test results and full test average values of influent and effluent sampling obtained throughout the testing period for: $CBOD_5$, TSS and O&G. Establish the treatment capacity of the product tested in pounds per day for $CBOD_5$.
Category 3 Black water component of residential sewage (such as composting and incinerating toilets).	Report test results on all required performance criteria according to the format prescribed in the NSF test protocol described in Table I.
Total Nitrogen Reduction in Categories 1 & 2 (Above)	Report test results on all required performance criteria according to the format prescribed in the test protocol described in Table I.

TABLE III

<table>
<tr><th colspan="7">Product Performance Requirements for Proprietary Treatment Products</th></tr>
<tr><th>Treatment Component/Sequence Category</th><th colspan="6">Product Performance Requirements</th></tr>
<tr><td rowspan="9">Category 1 Designed to treat sewage with strength typical of a residential source when septic tank effluent is anticipated to be equal to or less than treatment level E.</td><td colspan="6">Treatment System Performance Testing Levels</td></tr>
<tr><td rowspan="2">Level</td><td colspan="5">Parameters</td></tr>
<tr><td>$CBOD_5$</td><td>TSS</td><td>O&G</td><td>FC</td><td>TN</td></tr>
<tr><td>A</td><td>10 mg/L</td><td>10 mg/L</td><td>——</td><td>200/100 ml</td><td>——</td></tr>
<tr><td>B</td><td>15 mg/L</td><td>15 mg/L</td><td>——</td><td>1,000/100 ml</td><td>——</td></tr>
<tr><td>C</td><td>25 mg/L</td><td>30 mg/L</td><td>——</td><td>50,000/100 ml</td><td>——</td></tr>
<tr><td>D</td><td>25 mg/L</td><td>30 mg/L</td><td>——</td><td>——</td><td>——</td></tr>
<tr><td>E</td><td>125 mg/L</td><td>80 mg/L</td><td>20 mg/L</td><td>——</td><td>——</td></tr>
<tr><td>N</td><td>——</td><td>——</td><td>——</td><td>——</td><td>20 mg/L</td></tr>
<tr><td colspan="6">Values for Levels A - D are 30-day values (averages for $CBOD_5$, TSS, and geometric mean for FC.) All 30-day averages throughout the test period must meet these values in order to be registered at these levels.
Values for Levels E and N are derived from full test averages.</td></tr>
<tr><td>Category 2 Designed to treat high-strength sewage when septic tank effluent is anticipated to be greater than treatment level E.

(Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)</td><td colspan="6">All of the following requirements must be met:

(1) All full test averages must meet Level E; and
(2) Establish the treatment capacity of the product tested in pounds per day for $CBOD_5$.</td></tr>
<tr><td>Category 3 Black water component of residential sewage (such as composting and incinerating toilets).</td><td colspan="6">Test results must meet the performance requirements established in the NSF test protocol.</td></tr>
<tr><td>Total Nitrogen Reduction in Categories 1 & 2 (Above)</td><td colspan="6">Test results must establish product performance effluent quality meeting Level N, when presented as the full test average.</td></tr>
</table>