



STATE OF WASHINGTON

DEPARTMENT OF HEALTH
DIVISION OF ENVIRONMENTAL PUBLIC HEALTH
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October 4, 2021

TO: Michelle A. Davis, Executive Director
Washington State Board of Health

FROM: Lauren Jenks, Assistant Secretary
Division of Environmental Public Health

SUBJECT: STATE BOARD OF HEALTH RULEMAKING AUTHORITY DELEGATION REQUEST
Chapter 246-260 WAC, Water recreation facilities; and
Chapter 246-262 WAC, Recreational water contact facilities

Chapters 246-260 and 246-262 WAC outline requirements necessary to protect the health, safety, and welfare of users of water recreation facilities and water contact facilities, respectively. These two chapters stipulate the use of the American National Standards Institute (ANSI)/Association of Pool and Spa Professionals (APSP) 2011 suction fitting standards for use in swimming pools, wading pools, spas, and hot tubs.

On May 24, 2019, the federal Consumer Product Safety Commission (CPSC) issued a direct final rule incorporating sections of ANSI/APSP/ICC-16 2017 as the successor suction fitting outlet cover standard under the Virginia Graeme Baker Pool and Spa Safety Act, with an effective date of November 24, 2020. The Pool & Hot Tub Alliance requested an extension of the effective date for the drain cover standard, citing as justification closures of third-party testing laboratories due to the COVID-19 pandemic. The effective date was extended, and the new standard became effective on May 24, 2021.

As a result of the adoption of the 2017 standard, the “suction fitting standard” definitions in chapters 246-260 and 246-262 WAC are inconsistent with the new federal standard. Now that manufacturers and distributors have started putting products tested and certified to ANSI/APSP/ICC-16 2017 on the market, they will quickly replace the old products. This means that, as time goes on, it will become more difficult to find products that meet the ANSI/APSP-16 2011 on the market. However, covers tested and approved under the old standard are still safe to use.

The Department of Health (department) is requesting the State Board of Health (board) delegate its rule making authority to amend WAC 246-260-010 and WAC 246-262-010 to amend these rule sections to add

the new standard via expedited rulemaking authorized under RCW 34.05.353¹ so they align with the federal requirements to allow the use of the new standard as soon as possible. This rulemaking will retain the existing standard in the rule at this time but also adopt and add the new standard to the definition of “suction fitting standard.”

The board is in the process of updating both chapters, and the department plans on convening an advisory committee comprised of industry experts in 2022. Based on recommendations from the advisory committee, the board and department will evaluate if it is optimal to remove the old standard as part of both rule chapter amendments.

Conformance with Board Delegation Criteria

This rulemaking delegation request is based on the following criteria established in the board’s Policy Number 2000-001, *Considering Delegation of Rules to Department of Health*:

The extent to which the proposed rule seeks to adopt federal requirements in which the state has little or no discretion.

The department is requesting the board delegate its rule making authority to amend WAC 246-260-010 and WAC 246-262-010 to add the new CPSC federal standard. The state does not have discretion on recognizing the new federal standard other than in rule.

The extent to which the substance and direction of the proposed rule is expected to have broad public and professional consensus.

Based on discussions with several interested parties, the department anticipates universal support for this rulemaking as it has benefits (i.e., owners and operators will have the ability to use suction outlet fittings made in compliance with the new standard) and no costs or burden (i.e., suction outlet fittings made under the old standard are still usable).

The extent to which the proposed rule may make significant changes to a policy or regulatory program.

Changes to the rule sections will be limited to adopting by reference the ANSI/APSP/ICC-16 2017 standard by changing the definition of a suction fitting outlet cover to include the new federal standard. It will not make a significant change to a policy or regulatory program.

The extent to which the rule revision process would benefit from the Board’s role as a convener of interested parties.

The department does not anticipate any controversy or opposition to the rule changes. The department, following the requirements of RCW 34.05.353, will notify all interested parties via email, provide the proposed rule language to interested parties, and post information about the rulemaking on the department’s Water Recreation Program web page.

For additional information, please contact Todd Phillips, Director, Office of Environmental Health and Safety at (360) 236-3302 or todd.phillips@doh.wa.gov.

cc: Todd Phillips

¹ An agency may file notice for the expedited adoption of rules when the proposed rules adopt or incorporate by reference without material change federal statutes or regulations.