WASHINGTON STATE DEPARTMENT OF HEALTH

Significant Legislative Rule Analysis

WAC 246-272A-210 a Rule Concerning Minimum Horizontal Separations for On-Site Sewage Systems (OSS)

June 2026

WASHINGTON STATE BOARD OF HEALTH

Washington State Department of HEALTH

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SECTION 1

A brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed.

The State Board of Health (board) is proposing to amend WAC 246-272A-0210 to clarify the minimum horizontal separations (setbacks) for surface water used as a public and nonpublic drinking water source. The board is also proposing to make several technical, grammatical, and editorial corrections in WAC 246-272A-0010, 246-272A-0110, 246-272A-0120(5)(b)(ii), 246-272A-0210, and 246-272A-0240(2)(c).

The board has the authority under RCW 43.20.050(3) to adopt rules for the design, construction, installation, operation, and maintenance of on-site sewage systems (OSS) with flows of less than 3,500 gallons per day. Chapter 246-272A WAC establishes the standards for these systems and the Department of Health (department) implements the OSS program.

Table IV in WAC 246-272A-0210 establishes the minimum horizontal separations, or setbacks, between site features and OSS system components. These setbacks are the minimum horizontal distances required between system components and other structures or features to prevent contamination and ensure proper functioning.

In March 2024, the board adopted the most recent revisions to chapter 246-272A WAC. Under this rulemaking, the setbacks in Table IV were amended. The setback requirement for surface water used as a public drinking water source was increased to proactively protect source water around surface water intakes. The setback requirement was changed from 100 feet to 200 feet from the drainfield/reserve area, from 50 feet to 200 feet from the sewage tank or distribution box, and from 50 feet to 100 feet from the building sewer or piping.

The implementation of the rule resulted in unintended consequences for local health jurisdictions (LHJs) around the state. The rule as amended in 2024 has been interpreted to require a 200-foot setback along many miles of rivers, regardless of where the drinking water intake is located. This was not the intent of the changes to WAC 246-272A-0210.

In November 2025, the board received a petition for rulemaking requesting that the board revert the setbacks for surface water used as a public drinking water source to the previous version of the rule. The petitioner stated that the 2024 rule amendment impacts the development of lots along the Pend Oreille River system.

The proposed rules revert the setbacks for surface water used as a public drinking water source to the distances that were in place prior to the 2024 rulemaking, which will increase usable land area and provide clarity to interested parties who will be implementing the rule. Additionally, the proposed rules update the setback for a public drinking water spring from the building sewer and nonperforated distribution pipe to align with drinking water standards in WAC 246-290-135. Finally, the proposed rules make several editorial and technical corrections throughout the chapter to address issues discovered after the most recent rulemaking.

SECTION 2

Significant Analysis Requirement

As defined in RCW 34.05.328, portions of the rule require significant analysis because the proposed rule changes are not exceptions provided in RCW 34.05.328.

The following SA Table 1. identifies rule sections or portions of rule sections that have been determined exempt from significant analysis based on the exemptions provided in RCW 34.05.328(5) (b) and (c).

SA Table 1. Summary of Sections not requiring Significant Analysis

WAC Section and Title	Description of Proposed Changes	Rationale for Exemption Determination
WAC 246-272A-0010, Definitions.	• Corrected a misspelling within the definition of "residential sewage."	This section of rule is exempt from analysis under RCW 34.05.328(5)(b)(iv). The proposed change corrects a typographical error.
WAC 246-272A-0110	• Removed obsolete asterisks related to composting and incinerating toilets in Table 1 • Updated the publication dates of NSF/ANSI 40, 41, and 245 in Table 1 to reflect the most recent versions.	This section of rule is exempt from analysis under RCW 34.05.328(5)(b)(iii) and (iv). The proposed changes both incorporate by reference a national consensus code and correct typographical errors.
WAC 246-272A-0120	• Updated the publication date for the proprietary on-site wastewater treatment products Department Standards & Guidance document.	This section of rule is exempt under RCW 34.05.328(5)(b)(iv). The proposed change corrects a typographical error. During the 2024 rulemaking project, the department anticipated completing the guidance document by February 2025. The department now anticipates completing and publishing the document in July 2026. The proposed change reflects that new timeline.

WAC 246-272A-0240	• Corrected an internal citation.	This section of rule is exempt under RCW 34.05.328(5)(b)(iv). The proposed change corrects a typographical error.

SECTION 3

Goals and objectives of the statute that the rule implements.

RCW 43.20.050(3) requires the board to adopt rules for the design, construction, installation, operation, and maintenance of on-site sewage systems with design flows of less than three thousand five hundred gallons per day. The intent of the statute is to protect public health by minimizing both the potential for exposure to sewage and the adverse effects of discharges on ground and surface waters. The proposed rule meets that intent by ensuring that setback requirements are scientifically tailored to actual contamination risks, geographically targeted to areas where drinking water sources are vulnerable, and implementable by local health jurisdictions.

SECTION 4

Explanation of why the rule is needed to achieve the goals and objectives of the statute, including alternatives to rulemaking and consequences of not adopting the proposed rule.

The board and department explored alternatives to rulemaking to address the concerns of interested parties and to clarify the issue. Alternatives included the publishing of technical guidance as well as the issuance of an interpretive statement. However, these alternatives are not a permanent solution nor are they enforceable. Rulemaking is needed because the minimum horizontal separations are set in rule.

SECTION 5

Analysis of the probable costs and benefits (both qualitative and quantitative) of the proposed rule being implemented, including the determination that the probable benefits are greater than the probable costs.

WAC 246-272A-0210 Location.

Description: The rule establishes the minimum horizontal separations, or setbacks, between site features and OSS system components. These setbacks are the minimum horizontal distances required between system components and other structures or features to prevent contamination and ensure proper functioning.

The proposed rule amends Table IV, Minimum Horizontal Separations, by separating surface water used as drinking water from public and nonpublic drinking water springs and adding a new row for surface water used as drinking water (public and nonpublic) measured from the ordinary high-water mark. The proposed rule changes setback distances for surface water of 100 feet from the edge of the soil dispersal component and reserve area, 50 feet from the sewage tank and distribution box, and 50 feet from the building sewer and nonperforated distribution pipe, which aligns with how the rule was previously written.

Additionally, the proposed rule updates the setback for a public drinking water spring from the building sewer and nonperforated distribution pipe from 100 feet to 200 feet to be consistent with state and federal drinking water standards.

Cost(s): Local health jurisdictions (LHJs) can choose to either adopt board standards by reference or incorporate the standards into their own codes. The board and department has identified 12 LHJs that updated their local codes following the most recent rulemaking in 2024. These LHJs incorporated Table IV in their codes, rather than adopting it by reference. Therefore these 12 LHJs will need to revise their codes when this proposed rule goes into effect.

The board and department anticipate that the entire rulemaking process for an LHJ to incorporate the updated standards into their local codes may take between 5-10 hours, with several different positions such as an Environmental Health Director, On-site Sewage Lead, or Environmental Health Specialist being involved in the process.

The board and department estimated a one-time cost ranging from $417.15 to $834.30 for an LHJ to update their local codes to incorporate the new setbacks.[1]

The board and department do not anticipate that the proposed rule will result in any new or additional costs to OSS installers, as they are required to install the system as designed and to follow the setback distances when doing so. Since there will not be costs incurred by the

[1] Average Hourly Wage of Management Occupations, $83.43. Occupational Employment and Wage Statistics (Accessed on June 1, 2026)

installers, the board and department also do not anticipate that any costs will be passed down to the property developer or homeowner.

Benefit(s): The proposed rule reverts the setbacks to the distances that were in place prior to the 2024 rulemaking, which will increase usable land area and provide clarity to interested parties who will be implementing the rule. Additionally, property developers and homeowners may experience cost savings. Without the proposed changes, property developers and homeowners may have incurred costs associated with the need for additional treatment that utilizes more expensive technology. Instead, the proposed rule will make more of their lot potentially acceptable for the installation of the OSS.

In addition to the above changes, the board is proposing to make the following editorial and clarifying changes to WAC 246-272A-0210. These portions of the proposed rule are exempt from analysis under RCW 34.05.328(5)(b)(iv), as they correct typographical errors and provide clarification without changing the effect of the rule.

- Remove the first footnote from Table IV and update the footnote numbers accordingly.
- Update the setback for a public drinking water spring from the building sewer and nonperforated distribution pipe from 100 to 200 feet to be consistent with state and federal drinking water standards.

Summary of all Cost(s) and Benefit(s)

SA Table 2. Summary of Section 5 probable cost(s) and benefit(s)

WAC Section and Title	Probable Cost(s)	Probable Benefit(s)
WAC 246-272A-0210, Location.	One time-cost ranging from $417.15 to $834.30.	– Increases usable land area. – Provides clarity to interested parties. – Provides a potential cost savings for property developers and homeowners.

Determination

Probable Benefits greater than Probable Costs

It was determined that the probable benefits of the proposed rule are greater than the probable costs.

SECTION 6

List of alternative versions of the rule that were considered including the reason why the proposed rule is the least burdensome alternative for those that are required to comply and that will achieve the goals and objectives of the proposed rule.

The board and department considered several alternatives to the proposed rule. These options were discussed with interested parties during the rulemaking workshop held on April 9, 2026. Additionally, the board sent a follow-up survey to all workshop participants to further solicit feedback on the proposed rules.

Treating all surface water the same in Table IV, regardless of use

Some of the workshop participants commented that all surface water, regardless of whether it is used as a drinking water source, should be treated the same in Table IV. Others expressed concern with this option, stating that doing so could be problematic and may create undesirable outcomes. This option would eliminate the existing 10-foot building sewer setback that currently applies to surface water not used as a drinking water source.

The board and department determined that this option would be outside the scope of this rulemaking, as this project is scoped to address setbacks for surface water used as a public or nonpublic drinking water source.

Separating out surface water used as a public drinking water source from surface water used as a nonpublic drinking water source

During the workshop, the board and department presented a draft of the rule that would have listed the setbacks for surface water used as a public drinking water source on a separate row from the nonpublic drinking water source. The setback distances would have been the same.

Survey results showed that interested parties preferred to combine the two rows into one, which is why the proposed rules have one new row in Table IV, for surface water used as drinking water (public and nonpublic) measured from the ordinary high-water mark.

SECTION 7

Determination that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

The proposed rule does not require those to whom it applies to take an action that violates requirements of federal or state law.

SECTION 8

Determination that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The proposed rule does not impose more stringent performance requirements on private entities than on public entities.

SECTION 9

Determination if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.

The rule does not differ from any federal regulation or statute applicable to the same activity or subject matter.

SECTION 10

Demonstration that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

There are no federal, state, or local laws applicable to the same activity or subject matter.