



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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FILED

DATE: May 27, 2022

TIME: 10:49 AM

WSR 22-12-068

Agency: Department of Health

Original Notice

Supplemental Notice to WSR

Continuance of WSR

Preproposal Statement of Inquiry was filed as WSR ; or

Expedited Rule Making--Proposed notice was filed as WSR ; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Proposal is exempt under RCW .

Title of rule and other identifying information: (describe subject) WAC 246-292-010, Definitions, abbreviations and acronyms, and WAC 246-292-085, Grandparented certification. The Department of Health (department) is proposing to eliminate proposal eliminates the term "grandparented certification" and replaces it with the term "legacy certification".

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
07/12/2022	1:00PM	In response to the coronavirus disease 2019 (COVID-19) public health emergency, the Department of health will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington State. A virtual public hearing, without a physical meeting space, will be held instead. Register in advance for this webinar: https://us02web.zoom.us/webinar/register/WN_2M17f1bOR0icg4Y2VfBXKw After registering, you will receive a confirmation email containing information about joining the webinar.	

Date of intended adoption: 07/19/2022 (Note: This is NOT the effective date)

Submit written comments to:

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Division of Environmental Health

PO BOX 47820

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Email: <https://fortress.wa.gov/doh/policyreview>

Fax: N/A
Other: nina.helping@doh.wa.govt
By (date) 07/12/2022

Assistance for persons with disabilities:

Contact Nina Helping
Phone: (360) 236-3065
Fax: N/A
TTY: 711
Email: nina.helping@doh.wa.gov
Other: N/A
By (date) 07/05/2022

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposal replaces the historically racist term "grandparent" with the term "legacy" without making a substantive change. Currently the existing rules use the term "grandparented certification" to mean a certified operator who received their certification prior to January 1, 2001 and has been granted an exemption from the operator in responsible charge requirements for the initial education, experience, and examination requirements for the public water system's assigned certification classification and can continue to operate under the existing set of regulations; however, the term "grandfathered" carries problematic connotations, as it was coined in the late 1800's to suppress voting rights. The proposed change is intended to help achieve procedural and outcome fairness, promoting dignity, honor, and respect for all people

Reasons supporting proposal: The ratification of the 15th Amendment stated that all citizens of the United States to vote shall not be denied or abridged by the United States or by any State in the account of race, color, or previous condition of servitude. Some states enacted amendments, at the state level, to prevent African American citizens from exercising their right to vote, by stating that an illiterate man could vote as long as he or his lineal ancestor (i.e., grandfather) had been a registered voter before 1867 - three years before the passage of the 15th Amendment.

Engrossed Second Substitute House Bill 1783 (E2SHB 1783), chapter 332, Laws of 2020, was adopted and as a result established the formulation of chapter 43.06D RCW- Office of Equity (OOE). OOE was founded to foster guiding principles to identify and coordinate effective strategies that focus on eliminating systemic barriers for historically and currently marginalized groups by providing a unified vision around equity for all state agencies. OOE uses equitable lenses to assist government agencies to promote diversity, equity, and inclusion in all aspects of their decision making, including but not limited to services, programming, policy development, budgeting, and staffing. These equitable lenses were designed to develop, strengthen, and support policies and procedures that distribute and prioritize resources to those who have been historically and currently marginalized, eliminate systemic barriers that have been deeply entrenched in systems of inequality and oppression, and achieve procedural and outcome fairness, promoting dignity, honor, and respect for all people.

In order to embrace principles established by the OOE, the department is proposing amendments to the term "grandfather" within the Waterworks Operator Certification rule, chapter 269-292 WAC.

The department consulted with the Environmental Protection Agency (EPA) Region 10, to determine if amending the term to legacy would conform to EPA's anti-backsliding provisions. In February 2022, EPA's Region 10 office informed the department that changing the term, while not changing its intended use or making any substantive changes, would be an acceptable modification of the rule language.

The proposed amendments do not diminish the department's enforceability of the chapter to carry out an operator certification program pursuant to Safe Drinking Water Act regulations and the primacy agreement between the department and EPA. Making this change advances the department's desire to be equitable and inclusive of all people.

Statutory authority for adoption: RCW 70A.120.050

Statute being implemented: RCW 70A.120.050

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Washington State Department of Health Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Nina Helpling	111 Israel Rd SE, Tumwater, WA 98501	(360) 236-3065
Implementation:	William Bernier	111 Israel Rd SE, Tumwater, WA 98501	(360) 236-3562
Enforcement:	William Bernier	111 Israel Rd SE, Tumwater, WA 98501	(360) 236-3562

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain: The agency did not complete a cost benefit analysis under RCW 34.05.328. RCW 34.05.328(5)(b)(iv) exempts rules that only correct typographical errors, make address or name changes or clarify the language of a rule without changing its effect.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW .

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: 05/27/2022

Signature:

Name: Lauren Jenks



Title: Assistant Secretary

WAC 246-292-010 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) **"Air gap"** means a physical separation measured vertically between the lowest point of a free-flowing discharge end of a potable water supply pipeline and the overflow rim of an open or nonpressurized receiving vessel.

(2) **"Approved air gap"** is defined in chapter 246-290 WAC.

(3) **"Approved AVB (approved atmospheric vacuum breaker)"** is defined in chapter 246-290 WAC.

(4) **"Approved backflow preventer"** is defined in chapter 246-290 WAC.

(5) **"Approved backflow prevention assembly"** is defined in chapter 246-290 WAC.

(6) **"Authority having jurisdiction"** means the local official, board, department, or agency authorized to administer and enforce the Uniform Plumbing Code adopted in chapter 19.27 RCW.

(7) **"AVB (atmospheric vacuum breaker)"** means a device that contains an air inlet, vent, air inlet valve, and check seat and is used to prevent backsiphonage backflow.

(8) **"BAT (backflow assembly tester)"** means an individual meeting the requirements of this chapter and certified under chapter 70A.120 RCW to inspect, field test, maintain, and repair backflow prevention assemblies, devices, and air gaps that protect the public water system.

(9) **"Backflow"** means the reversal of flow of water or other substances through a cross-connection into the public water system or consumer's water system.

(10) **"Backflow preventer"** means a backflow prevention assembly, air gap, or AVB.

(11) **"Backflow preventer inspection and field test"** means the set of procedures and measurements performed by a BAT to evaluate a backflow preventer's approval status, installation, and performance to determine compliance with the requirements in WAC 246-290-490.

(12) **"Backflow prevention assembly"** means a mechanical backflow preventer designed for in-line testing and repair including, but not limited to:

(a) Reduced pressure backflow assembly;

(b) Reduced pressure detector assembly;

(c) Double check valve assembly;

(d) Double check detector assembly;

(e) Pressure vacuum breaker assembly; or

(f) Spill-resistant vacuum breaker assembly.

(13) **"BTO (basic treatment operator)"** means an individual meeting the requirements of this chapter and certified under chapter 70A.120 RCW to perform routine on-site duties in a water treatment plant. BTO duties affect water treatment plant performance, public water system performance, water quality, water quantity, or public health protection.

(14) **"CCS (cross-connection control specialist)"** means an individual meeting the requirements of this chapter and certified under

chapter 70A.120 RCW to develop and implement a cross-connection control program.

(15) "**Certificate**" means a document issued annually by the department stating that the operator has met the requirements for a specific certified operator classification in WAC 246-292-060.

(16) "**Certified operator**" means an individual meeting the requirements of this chapter, certified under chapter 70A.120 RCW, and who has a valid certificate for one or more of the following classifications:

- (a) BAT;
- (b) BTO;
- (c) CCS;
- (d) WDS;
- (e) WDM; or
- (f) WTPO.

(17) "**CEU (continuing education unit)**" means the nationally recognized measurement, similar to college credit, developed by IACET, in which one CEU is awarded for every 10 contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction.

(18) "**College credit**" means a measurement that documents completion of educational courses earned toward a college degree from an accredited college or university.

(19) "**Community water system**" means any Group A public water system providing service to 15 or more service connections used by year-round residents for 180 or more days within a calendar year, regardless of the number of people, or regularly serving at least 25 year-round (i.e., more than 180 days per year) residents.

(20) "**Consumer**" means any person receiving water from a public water system from either the meter or the point where the service line connects with the distribution system if no meter is present. For purposes of cross-connection control, "consumer" means the owner or operator of a water system connected to a public water system through a service connection.

(21) "**Consumer's premises**" means a consumer's real property, any easement held by a consumer for the purpose of delivering the water to the consumer's real property, and all buildings and fixtures on the consumer's real property.

(22) "**Consumer's water system**" means any potable or industrial water system that begins at the point of delivery from the public water system and is located on the consumer's premises. The consumer's water system includes all auxiliary sources of supply, storage, treatment, and distribution facilities, piping, plumbing, and fixtures under the control of the consumer.

(23) "**Contract operator**" means a certified operator who is approved by the department to operate three or more Group A public water systems.

(24) "**Cross-connection control program**" means the administrative and technical procedures the purveyor implements to protect the public water system from contamination via cross-connections as required in WAC 246-290-490.

(25) "**Department**" means the Washington state department of health.

(26) "**Distribution system**" means all piping components of a public water system that serve to convey water from transmission mains linked to source, storage and treatment facilities to the consumer excluding individual services.

(27) "**GED**" means the general educational development test of the American Council on Education.

(28) (~~"Grandparented certification" means an operator certification granted before January 1, 2001, under which the department granted an exemption for the existing operator in responsible charge from meeting the initial education, experience and examination requirements for the public water system's assigned certification classification.~~

~~(29))~~ "**Gross negligence**" means an act or omission performed or not performed in reckless disregard of a legal duty, or without even slight care.

~~((30))~~ (29) "**GWI (groundwater under the direct influence of surface water)**" means any water beneath the surface of the ground that the department determines has the following characteristics:

(a) Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH closely correlating to climatological or surface water conditions where natural conditions cannot prevent the introduction of surface water pathogens into the source at the system's point of withdrawal.

~~((31))~~ (30) "**IACET**" means the International Association for Continuing Education and Training.

(31) "**Legacy certification**" means an operator certification granted before January 1, 2001, under which the department granted an exemption for the existing operator in responsible charge from meeting the initial education, experience, and examination requirements for the public water system's assigned certification classification.

(32) "**Major segment**" means a distinct portion of a public water system based on system size and complexity that a purveyor assigns to one or more certified operators in responsible charge.

(33) "**Nationally recognized association of certification authorities**" means an organization that:

(a) Serves as an information center for certification activities;

(b) Recommends minimum standards and guidelines for classification of potable water treatment plants, distribution systems, and certification of operators;

(c) Facilitates reciprocity between a state or provincial program; and

(d) Assists authorities in establishing new certification programs and updating existing programs.

(34) "**Noncommunity water system**" means a Group A public water system that is not a community water system. Noncommunity water systems are further defined as nontransient noncommunity and transient noncommunity.

(35) "**Nontransient noncommunity water system**" means a Group A public water system that provides service opportunities to 25 or more of the same nonresidential people for 180 or more days within a calendar year.

(36) "**OIT (operator in training)**" means an individual with less than the required amount of operating experience meeting the requirements of this chapter and certified under chapter 70A.120 RCW to perform routine on-site duties in a water treatment plant or distribution system.

(37) "**Operating experience**" means the routine performance or management of duties:

(a) In a water treatment plant or distribution system; and

(b) That affect water treatment plant performance, distribution system performance, water quality, water quantity, or public health protection.

(38) "**Operating shift**" means a designated period of time in which a certified operator makes decisions and takes actions that directly impact drinking water quality, water quantity, or public health protection.

(39) "**Person**" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

(40) "**Premises isolation**" is defined in chapter 246-290 WAC.

(41) "**Professional growth reporting period**" means a designated period of time not less than three years, in which a certified operator completes the professional growth requirement in WAC 246-292-095.

(42) "**Public water system (Group A public water system)**" means:

(a) A system with 15 or more service connections, regardless of the number of people; or

(b) A system serving an average of 25 or more people per day for 60 or more days within a calendar year, regardless of the number of service connections; and

(c) In addition, a Group A public water system is further defined in WAC 246-290-020.

(43) "**Purveyor**" means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or other entity owning or operating a public water system. Purveyor also means the authorized agents of these entities.

(44) "**Relevant excess education**" means science, applied science, or technology CEUs or college credits that exceed the minimum education required for certification in a specific certified operator classification. Example fields of study include, but are not limited to:

(a) Biology;

(b) Chemistry;

(c) Engineering;

(d) Geology; and

(e) Physics.

(45) "**Relevant water system training**" means training that directly relates to information and procedures that influence water quality, water quantity, or public health protection, including:

(a) The operation or maintenance activities of a public water system; or

(b) Managing the operation or maintenance activities of a public water system.

(46) "**Responsible charge**" means the authority a purveyor grants to a certified operator to make decisions:

(a) That will directly impact water quality, water quantity, or public health protection of a public water system; and

(b) Regarding the daily operational activities, process control, or system integrity of a water treatment plant or distribution system.

(47) "**SMA (satellite system management agency)**" means a person that is approved by the department under chapter 246-295 WAC to own or operate more than one public water system on a regional or county-wide basis without the necessity for a physical connection between the systems.

(48) "**Surface water**" means a body of water open to the atmosphere and subject to surface runoff.

(49) "**Transient noncommunity water system**" means a Group A public water system that serves:

(a) Twenty-five or more different people each day for 60 or more days within a calendar year; or

(b) Twenty-five or more of the same people each day for 60 or more days, but less than 180 days within the calendar year.

(50) "**USC**" means the University of Southern California.

(51) "**Validated examination**" means an examination that is independently reviewed by subject matter experts, to verify that the examination is based on a job analysis and, where applicable, is related to the classification of a water treatment plant and distribution system.

(52) "**Water-related experience**" means experience:

(a) Operating a water treatment plant or distribution system;

(b) Working in water quality, water resources, or water infrastructure in a federal, state, county, local, or other governmental agency;

(c) Working in industrial water;

(d) Working in wastewater treatment; or

(e) Working as a consulting engineer or operations consultant in water quality, water resources, or water infrastructure.

(53) "**Water treatment plant**" means that portion of a public water system that treats or improves the physical, chemical, or microbial quality of the system's water to comply with water quality requirements in chapter 246-290 WAC.

(54) "**WDM (water distribution manager)**" means an individual meeting the requirements of this chapter and certified under chapter 70A.120 RCW to perform or manage routine on-site duties in the distribution system of a public water system that serves more than 250 people. WDM duties affect the public water system performance, water quality, water quantity, or public health protection.

(55) "**WDS (water distribution specialist)**" means an individual meeting the requirements of this chapter and certified under chapter 70A.120 RCW to perform or manage on-site duties in a distribution system of a public water system that serves 250 people or less. WDS duties affect public water system performance, water quality, water quantity, or public health protection.

(56) "**WFI (water facilities inventory)**" means the department form required in WAC 246-290-480(2) that summarizes a public water system's characteristics.

(57) "**WTPO (water treatment plant operator)**" means an individual meeting the requirements of this chapter and certified under chapter 70A.120 RCW to perform or manage on-site duties in a water treatment plant. WTPO duties affect plant performance, public water system performance, water quality, water quantity, or public health protection.

AMENDATORY SECTION (Amending WSR 14-01-003, filed 12/4/13, effective 1/4/14)

WAC 246-292-085 ((Grandparented)) Legacy certification. (1) A certified operator who received a ((grandparented)) legacy certification prior to January 1, 2001, remains subject to the following:

(a) A ((grandparented)) legacy operator certification is valid only for the designated public water system and is not transferable to another operator or public water system;

(b) An operator with a ((grandparented)) legacy certification shall meet all renewal requirements in WAC 246-292-090; and

(c) If an operator with a ((grandparented)) legacy certification fails to renew the certificate as required in WAC 246-292-090, the operator shall no longer be certified. If the certificate expires, the operator must apply for a new certification and meet all the requirements of a new applicant as required in WAC 246-292-060 and 246-292-070.

(2) If the classification of a water treatment plant or distribution system changes to a higher level, the ((grandparented)) legacy certification is no longer valid. The purveyor shall comply with the requirements for obtaining a certified operator, as required in WAC 246-292-040 and 246-292-050.