

# Small Business Economic Impact Statement

WAC 246-272A-0110  
a Rule Concerning Table 1,  
Category 2, to add NSF/ANSI  
40 testing for Category 2  
products

October 2024

To request this document in another format, call 1-800-525-0127. Deaf or hard of hearing customers, please call 711 (Washington Relay) or email [doh.information@doh.wa.gov](mailto:doh.information@doh.wa.gov).

**For more information or additional copies of this report:**

Washington State Department of Health

Division/Office: Environmental Public Health – Office of the Assistant Secretary

Contact Name: Peter Beaton

PO Box 47824, Olympia WA 98504-7824 Tumwater, WA 98602

Peter.beaton@doh.wa.gov

## **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. A description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

The Department of Health (department) is proposing amending WAC 246-272A-0110, Table 1, Category 2, to add NSF/ANSI 40 - Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021) testing for Category 2 products.

WAC 246-272A-0110 states manufacturers of proprietary treatment products used in on-site sewage systems must test their products with an EPA testing method. Manufacturers must register their products with the department based on 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.

Category 2 products treat high-strength sewage from restaurants and other facilities that generate high levels of oil and grease. Prior to the recent rule revision, the rule required testing for Category 2 products under the EPA/NSF Protocol for the Verification of Wastewater Treatment Technologies/EPA Environmental Technology Verification (April 2001). This protocol tested for organic sewage strength (Carbonaceous Biochemical Oxygen Demand, or CBOD<sub>5</sub>), suspended solids (Total Suspended Solids, or TSS), and oil and grease. EPA archived this testing protocol in 2013. During the recent rule revision, the EPA Method 1664, Revision B (February 2010) testing was adopted for Category 2 systems to treat oil and grease. This recommendation, however, neglected to assure that Category 2 products are also tested for CBOD<sub>5</sub> (organic sewage strength) and TSS (suspended solids). A manufacturer provided formal comment highlighting this oversight and recommended Category 2 products instead be tested with NSF/ANSI 40 - Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021). The department determined Category 2 products should be tested by both EPA Method 1664, Revision B (February 2010) and NSF/ANSI 40 -Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021).

The State Board of Health (board) has rulemaking authority for on-site sewage systems with design flows less than 3,500 gallons per day. Chapter 246-272A WAC, On-site Wastewater Systems, sets standards for the siting, design, installation, use, care, and

management of on-site sewage systems of this size. At the March 2024 board meeting, the Board delegated rulemaking to the department under RCW 43.20.050(4).

As a result of the rule, only manufacturers of Category 2 products will face the compliance cost (\$130,000) for the NSF/ANSI 40 test when developing new products. Businesses who purchase and install a Category 2 product from the manufacturers do not pay for the NSF/ANSI 40 test. The department does not expect businesses to need any professional services to comply with the rule.

## SECTION 2

Identification and summary of which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS).

**SBEIS Table 1. Summary of Businesses Required to comply to the Proposed Rule**

<b>NAICS Code (4, 5 or 6 digit)</b>	<b>NAICS Business Description</b>	<b>Number of businesses in Washington State</b>	<b>Minor Cost Threshold</b>
<b>562991</b>	Septic Tank and Related Services	237	\$2,951
<b>238910</b>	Site Preparation Contractors	2,498	\$4,226
<b>423390</b>	Other Construction Material Merchant Wholesalers	954	\$5,616
<b>326199</b>	All Other Plastics product Manufacturing	120	\$18,869
<b>333318</b>	Other Commercial and Service Industry Machinery Manufacturing	42	\$9,214

## SECTION 3

**Analysis of probable costs of businesses in the industry to comply to the proposed rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue.**

### **Description:**

WAC 246-272A-0110 states manufacturers of proprietary treatment products used in on-site sewage systems must test their products with an EPA testing method. Table I, Category 2 products must test for EPA Method 1664, Revision B (February 2010) to treat oil and grease. However, this test does not treat for organic sewage strength (CBOD<sub>5</sub>) and suspended solids (TSS). The department is proposing to add NSF/ANSI 40 -Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021) testing for Category 2 products to treat for organic sewage strength (CBOD<sub>5</sub>) and suspended solids (TSS).

### **Cost(s): Unit cost for NSF/ANSI 40 testing estimated cost: \$130,000<sup>1</sup>**

- The performance classification is based on the evaluation of system influent and effluent samples collected over a six-month period. Evaluation of influent and effluent samples over time allows the system's treatment efficacy to be characterized.
- Influent Samples: Total suspended solids (TSS) and biochemical oxygen demand (BOD<sub>5</sub>), collected 5 times per week; alkalinity, collected once per week.
- Effluent Samples: TSS and carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), collected 5 times per week.

### **Summary of all Cost(s)**

#### **SBEIS Table 2. Summary of Section 3 probable cost(s)**

<b>WAC Section and Title</b>	<b>Probable Cost(s)</b>
246-272A-0110 Proprietary treatment products—Eligibility for registration.	\$130,000 for each device tested

---

<sup>1</sup> Email correspondence from NSF, a firm recognized internationally for developing robust standards and tests, audits and certifying products for food, water, and dietary supplements.

## SECTION 4

**Analysis on if the proposed rule may impose more than minor costs for businesses in the industry. Includes a summary of how the costs were calculated.**

Yes, the costs of the proposed rule (Unit cost for NSF/ANSI 40 -Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021) =\$130,000 are greater than the minor cost thresholds.

<b>NAICS Code (4, 5 or 6 digit)</b>	<b>NAICS Business Description</b>	<b>Number of businesses in Washington State</b>	<b>Minor Cost Threshold</b>
<b>562991</b>	Septic Tank and Related Services	237	\$2,951
<b>238910</b>	Site Preparation Contractors	2,498	\$4,226
<b>423390</b>	Other Construction Material Merchant Wholesalers	954	\$5,616
<b>326199</b>	All Other Plastics product Manufacturing	120	\$18,869
<b>333318</b>	Other Commercial and Service Industry Machinery Manufacturing	42	\$9,214

### **Summary of how the costs were calculated**

The department contacted the NSF laboratory and asked for the price NSF/ANSI 40 - Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021) testing and the laboratory responded with the quote of \$130,000.

## SECTION 5

**(ONLY ANSWER IF SECTION 4 IS YES. IF SECTION 4 IS NO, THE SBEIS IS CONSIDERED COMPLETE)**

**Determination on if the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.**

**[SELECTION OF ONE OF THE STATEMENTS BELOW]**

Yes, the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

### **Explanation of the determination**

The proposed rule may have a disproportionate impact on small businesses because all businesses will face the same cost of \$130,000 for the NSF/ANSI 40 -Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021) test, so by any standard used the costs will be disproportionate.

## SECTION 6

**(ONLY ANSWER IF SECTION 5 IS YES. IF SECTION 5 IS NO, THE SBEIS IS CONSIDERED COMPLETE)**

**If the proposed rule has a disproportionate impact on small businesses, the following steps have been identified and taken to reduce the costs of the rule on small businesses.**

- 1. Reducing, modifying, or eliminating substantive regulatory requirements;**
- 2. Simplifying, reducing, or eliminating recordkeeping and reporting requirements;**
- 3. Reducing the frequency of inspections;**
- 4. Delaying compliance timetables;**
- 5. Reducing or modifying fine schedules for noncompliance; or**
- 6. Any other mitigation techniques including those suggested by small businesses or small business advocates.**

**If costs cannot be reduced an explanation has been provided below about why the costs cannot be reduced.**

The cost of the proposed rule cannot be reduced because it is a unit cost the laboratory charges for performing the test, which is governed by the laboratory. There was no

option to reduce or eliminate this test. Delaying compliance timelines would endanger public health. All recordkeeping components and inspections are intrinsic in the laboratory test and are controlled by the laboratory and manufacturer. Category 2 products that have not been tested with NSF/ANSI 40 would not be permitted to be sold in Washington. Non-compliance with this proposed rule, similar to non-compliance to the rest of chapter 246-272A WAC, is subject to the enforcement and penalties outlined in chapter 246-272A WAC.

## **SECTION 7**

**(ONLY ANSWER IF SECTION 5 IS YES. IF SECTION 5 IS NO, THE SBEIS IS CONSIDERED COMPLETE)**

**Description of how small businesses were involved in the development of the proposed rule.**

The department surveyed all known on-site sewage system component manufacturers about the proposed rule. Several small businesses responded. The manufacturers were generally neutral on the proposal. None proposed an alternative to requiring NSF/ANSI 40 -Residential Wastewater Treatment Systems (versions dated between January 2009 and May 31, 2021).

## **SECTION 8**

**(ONLY ANSWER IF SECTION 5 IS YES. IF SECTION 5 IS NO, THE SBEIS IS CONSIDERED COMPLETE)**

**The estimated number of jobs that will be created or lost in result of the compliance with the proposed rule.**

*The department does not believe the proposed rule will result in having businesses create or lose jobs as the result of the purposed rule.*