

Preliminary Small Business Economic Impact Statement

Chapter 246-366A WAC *Primary and Secondary Schools*

As amended October 8, 2008 by the State Board of Health

November 2008

DRAFT

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Preliminary Small Business Impact Statement

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August 2008

Brief Description of the Rule

Approximately 1 million children attend schools in Washington State. The State Board of Health (the board) is required to establish rules for environmental health and safety in all schools and has done so since the 1960s. The current framework in chapter 246-366 WAC, Primary and Secondary Schools, has been in place since 1971. These rules apply to 295 public school districts with approximately 2,300 school facilities as well as approximately 450 private schools. These rules are administered by local health jurisdictions.

In 2004, the board directed the Department of Health (the department) to begin a rulemaking process in response to growing concerns that the rules were generally outdated and no longer adequate for indoor air quality, drinking water, and safety in areas such as laboratories and playgrounds. As a result, this proposal will repeal the current chapter 246-366 WAC and replace it with chapter 246-366A WAC that has been reorganized and rewritten to clarify those requirements that are construction related and those that are a part of on-going operation and maintenance of facilities. Many parts of the current chapter have been reorganized and rewritten for clarity, but have not changed significantly.

The current rules, chapter 246-366 WAC, establishes minimum environmental health and safety standards for schools in Washington State. The specific objectives of the proposed revisions are to protect students and users of school facilities from environmental hazards by:

- Delineating responsibilities of the school boards and officials, the local board of health and health officer, and the department;
- Improving indoor air quality;
- Improving playground safety;
- Improving water quality monitoring;
- Improving mold prevention and remediation; and
- Improving overall school safety.

Small Business Economic Impact Statement Requirement

The department has reviewed this proposal and has determined that a small business economic impact statement is required because these rules affect privately owned schools, which, for the purposes of this analysis, are considered businesses. Small public schools are not included in this analysis as they are not considered a business under the Regulatory Fairness Act, chapter 19.85 RCW.

Industries Affected by the Rule

The industry affected by these rules is privately owned schools.

Costs of Complying with the Rule

The tables below reflect the incremental construction costs and operation and maintenance (O&M) costs for these rules. These costs are expressed as costs per school and cost per student. These costs are identified and explained in the Preliminary Significant Analysis for these rules.

The department assumes, with few exceptions such as playground equipment standards and HVAC costs, these costs apply to a representative school regardless of ownership type, i.e., public or private.

School Type	Size of Representative School (sq/ft)	Incremental Construction Costs per School	Incremental Construction Costs per Square Foot
Elementary	65,000	\$317,774	\$4.89
Middle/Jr. High	95,000	\$521,128	\$5.49
High School	225,000	\$962,432	\$4.28

School Type	Size of School (sq/ft)	Students per School	Start-up* O&M Costs per School	Start-up O&M Costs per Student	Annual On-going O&M Costs per School	Annual On-going O&M Costs per Student
Elementary	65,000	489	\$13,400	\$27.40	\$9,042	\$18.49
Middle/Jr. High	95,000	688	\$11,812	\$17.17	\$7,239	\$10.52
High School	225,000	1,442	\$14,838	\$10.29	\$9,868	\$6.84

*Start-up costs reflect the one-time costs for water quality, HVAC retrofit, and policy development although actual implementation dates for these requirements will vary depending on the requirement and school type.

Disproportionate Impact on Small Businesses

The department has determined that these rules may impose a disproportionate impact on small businesses, in this case small private schools. The department assumes that private schools are generally located in smaller sized facilities with fewer students per school. Based on information from the Office of Superintendent of Public Instruction website, the approximate 450 private schools serve on average 154 students each. Based on this fact and coupled with the reality of economies of scale, these privately owned schools will incur a higher average cost per square foot and per student to comply with the these rules than larger public schools. Using any of the methods provided for in statute to gauge impact [cost per employee (teachers and other school staff), cost per hour of labor (custodial staff), or cost per hundred dollars of sales (tuition)], these rules will have a disproportionate impact on small privately owned schools. And, while this analysis does not pertain to public entities, many of the same challenges due to economies of scale will also apply small public schools.

Mitigation Measures

The following describes mitigation measures considered during the development of these rules.

Reduce, modify, or eliminate substantive regulatory requirements:

These rules do not propose to reduce, modify, or eliminate substantive regulatory requirements for small businesses to do so would create dual standards that, in effect, would provide different health and safety protection for students based on school size or school ownership type.

Simplify, reduce, or eliminate record keeping and reporting requirements:

According to proposed rule as amended October 8, 2008 by the State Board of Health

These rules identify minimum record keeping and reporting requirements necessary to achieve the intent of these rules.

Reduce the frequency of inspections:

These rules establish consistent inspection frequency for all schools regardless of size or ownership type. However, the proposal grants local health jurisdictions the discretion to allow schools to self-inspect 2 out of every 3 years as a way to reduce costs.

Delay compliance timetables:

Operation and Maintenance – Two components of these rules have delayed implementation dates. The change from annual to periodic inspections is delayed one year from the effective date of these rules. Water quality monitoring for lead and copper have staggered effective dates starting with elementary schools in the first two years, junior high schools the third year, and senior high schools the fourth year.

Construction – There are conditions that modify the applicability of certain construction requirements of this chapter. The first in WAC 246-366A-005 provides for application of the existing construction requirements of chapter 246-366 WAC if the local permitting jurisdiction received a complete building permit application for school construction prior to September 1, 2010. The site review requirements of WAC 246-366A-030 allow for the same deviation from construction related requirements if construction plan notification to the local health officer is made prior to September 1, 2010. Lastly, WAC 246-366A-090 provides deviation from the new heating and ventilation construction requirements related to ducted air returns and upgraded duct lining if the local permitting jurisdiction received a complete building permit application prior to September 1, 2013.

Reduce or modify fine schedules for noncompliance:

This mitigation measure is not possible to apply to this rulemaking as there are no fine schedules established in these rules.

Other mitigation techniques:

The department will provide privately owned schools with all model policies (e.g., approved use and management of hazardous materials, use of upholstered furniture, animals in schools, safety standards, etc.) to help schools comply with these rules with the lowest possible cost.

These rules allow for variance requests to the local health officer so that schools can meet the intent of these rules in alternative, less costly ways.

Small Business Involvement in Rule Development

The department invited private school representatives to serve on the original school rule development committee as well as the costing workshop and the later rule revision team. Proposals from the representatives of private schools were considered as part of the process of rule development, but did not include proposed rule changes to specifically accommodate the special needs of private schools.

Jobs Created or Lost as a Result of the Rule

The department assumes that private schools will meet the intent of these rules in the least costly manner. The department assumes private schools will make necessary adjustments in their budgeting process, which could include reducing existing non-staffing costs and seeking additional revenue via tuition increases or other fund-raising activities. Based on these potential actions, coupled with private school's ability to seek variances from the local health officer, the department estimates that these rules will not result in any jobs created or lost.