



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Ecology AO # 09-09

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: Ecology is revising Chapter 173-50 WAC, Accreditation of Environmental Laboratories, in order to raise lab accreditation fees to cover program costs. Also, due to a budget reduction in the accreditation program, we needed to change some business practices in the rule that will reduce the costs of overseeing accredited labs. This includes decreasing the frequency of on-site audits at non-drinking water labs. To help offset the cost of the fee increase to accredited labs, we are reducing the number of required proficiency testing studies for labs who perform consistently well on such studies. There are also housekeeping amendments and clarification of the grounds for revoking or suspending accreditation.

Citation of existing rules affected by this order:

Repealed: 173-50-160, 173-50-180

Amended: 173-50-020, 173-50-030, 173-50-040, 173-50-050, 173-50-060, 173-50-063, 173-50-067, 173-50-070, 173-50-080, 173-50-090, 173-50-100, 173-50-110, 173-50-120, 173-50-130, 173-50-140, 173-50-150, 173-50-170, 173-50-190, 173-50-210, 173-50-220

Suspended:

Statutory authority for adoption: RCW 43.21A.230 allows Ecology to accredit environmental laboratories and to assess fees to cover the Department's costs. The State Department of Health (DOH) has delegated to Ecology in a memorandum of understanding its RCW 43.20.050 authority to certify drinking water laboratories. In Section 301 of ESHB 1244, the 2009 Legislature gave Ecology authority to raise fees for lab accreditation.

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 10-07-163 on March 24, 2010.

Describe any changes other than editing from proposed to adopted version:

We added two definitions and amended another. We added failure to meet requirements for proficiency testing (PT) as a reason for revoking or suspending accreditation. We removed the option of annual fee adjustments based on the Implicit Price Deflator since that figure no longer exists. We added the conditions under which we waive accreditation fees. In response to comments on the high cost of PT samples, we reduced the requirement for participation in PT studies for laboratories with a history of satisfactory PT results.

Please see Attachment A for details of changes to the proposed rule.

A preliminary cost-benefit analysis was prepared under RCW 34.05.328, and a final cost-benefit analysis is available by contacting:

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Date adopted: 8/9/10

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SIGNATURE

Ted Sturdevant by Polly Zehm

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 09, 2010

TIME: 2:21 PM

WSR 10-17-032

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	<u>1</u>	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>19</u>	Repealed	<u>2</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>15</u>	Repealed	<u>2</u>
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

Attachment A to CR-103
CHANGES TO PROPOSED RULE

WAC 173-50-040 Definitions.

We added the following definitions:

- “Accreditation year” - the one year period as stated on the certificate of accreditation.
- “Principal laboratory” - a laboratory designated by the Washington department of health to support the drinking water certification program.

These are terms added to the rule in response to comments from affected parties.

We changed the following definition:

"Procedural manual" - ~~until October 1, 2010, the *Department of Ecology Procedural Manual for the Environmental Laboratory Accreditation Program* dated November 2002, and beginning October 1, 2010, the *Department of Ecology Procedural Manual for the Environmental Laboratory Accreditation Program* dated September 2010.~~

We plan to complete the revision of the procedural manual by the rule effective date.

WAC 173-50-060 Responsibilities of environmental laboratories.

We changed the third bullet:

- Submit an initial set of ~~acceptable~~ satisfactory PT ~~((sample analysis))~~ sample results (WAC 173-50-070);
and

This change aligns the terminology related to changes in proficiency testing requirements.

WAC 173-50-070 ((Performance audit.)) Proficiency testing (PT).

We added the second sentence:

(2) ~~((Drinking water))~~ Accredited laboratories must analyze a minimum of one PT sample per applicable microbiology parameter per year and two PT samples for applicable chemistry parameters per year. For chemistry parameters, after an accredited laboratory submits two satisfactory PT sample results and no unsatisfactory results in an accreditation year, the laboratory is required to submit only one satisfactory PT sample result in subsequent accreditation years. This applies as long as there are no intervening unsatisfactory PTs.

This change was made in response to comments received by interested parties.

WAC 173-50-130 Requirements for maintaining accreditation status.

We added the parenthetical phrase:

(1) Accreditation is granted for a one-year period (the accreditation year) and expires one year after the effective date of accreditation.

This reiterates our definition of “accreditation year” added to WAC 173-50-040.

WAC 173-50-150 Revoking or suspending accreditation.

We added an additional condition to sub-section (3):

Reports two consecutive unsatisfactory PT sample results.

This was added to further clarify and align with our changes to WAC 173-50-070.

WAC 173-50-170 Third-party accreditation.

We changed this bullet:

- ~~A complete set of the most r~~Recent, satisfactory ((PT)) proficiency test results for the applicable parameters.

This was added to further clarify and align with our changes to WAC 173-50-070.

WAC 173-50-190 Fee structure.

We deleted this sentence:

~~((11)) (9) Dollar amounts listed in Table 1 and subsections ~~((6)) (4), (7), and (8)~~((, (9), and (10))) of this section may be adjusted every year based on inflation as indicated by the *Implicit Price Deflator for State and Local Government Services* as published by the economic and revenue forecast council.~~

This was done because the Implicit Price Deflator no longer exists.

We added this new sub-section:

(10) Accreditation fees are waived for laboratories operated by the Washington state departments of ecology and health. Accreditation fees are also waived for drinking water parameters certified by EPA Region 10 at designated principal laboratories.

This was added to clarify our existing practice for fee waivers.