

WSR 23-04-100

PROPOSED RULES

STATE BOARD OF HEALTH

[Filed January 31, 2023, 3:32 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-500-055 Human remains reduced through natural organic reduction. The state board of health (board) is proposing administrative edits through exception rule making to correct typographical errors in the rule and clarify rule language without changing its intended effect.

Hearing Location(s): On March 8, 2023, at 1:30 p.m. This will be a hybrid meeting. Attend in person at Washington State Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501. Zoom webinar information for those attending virtually https://us02web.zoom.us/webinar/register/WN_VJVUA9FgQdym6TzrmsmD2g.

Date of Intended Adoption: March 8, 2023.

Submit Written Comments to: Molly Dinardo, P.O. Box 47990, Olympia, WA 98504-7990, email molly.dinardo@sboh.wa.gov, by February 27, 2023.

Assistance for Persons with Disabilities: Contact Melanie Hisaw, phone 360-236-4104, email melanie.hisaw@sboh.wa.gov, by March 1, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to clarify rule language in WAC 246-500-055 and correct a typographical error. This rule establishes the requirements that natural organic reduction (NOR) facilities must meet for this specific reduction method. Under this section, NOR facility operators must collect material samples for analysis and conduct testing for certain contaminants. Interested parties have requested clarity and guidance with respect to Table 500-A. The table requires testing for fecal coliform or salmonella and arsenic, cadmium, lead, mercury, and selenium but does not expressly include the word "and" between salmonella and arsenic. In addition, subsection (2)(b) refers to "dental filings" when it should refer to "dental fillings" with respect to the weight of physical contaminants that may be present in reduced remains.

Exception rule making is needed for the board to expeditiously make administrative edits to the rule for purposes of clarity. Testing of natural organic reduction final product is essential to ensure the process eliminates pathogens and elements harmful to human health and the environment.

Reasons Supporting Proposal: NOR was approved by the legislature in ESSB 5001 (chapter 432, Laws of 2019) as an authorized method for the disposition of human remains. Washington was the first state in the county, and first place in the world to authorize this disposition method for human remains. This rule addresses specific health and safety concerns related to NOR and is intended to prevent and control health hazards that could be linked to NOR.

WAC 246-500-055 went into effect in January 2021. Since then, there have been four facilities licensed to conduct NOR in Washington. To date, each facility has successfully collected material samples, analyzed them for physical contaminants, and sent samples to be analyzed by third-party testing facilities.

This proposal is necessary to allow facilities to continue with their processes and ensure the initial testing requirements described in the rule are clear and accurate.

Statutory Authority for Adoption: RCW 43.20.050 (2)(f).

Statute Being Implemented: RCW 43.20.050 (2)(f); ESSB 5001 (chapter 432, Laws of 2019) as codified in chapter 68.05 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state board of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Molly Dinardo, 101 Israel Road S.E., Tumwater, WA 98504, 564-669-3455; Enforcement: Funeral and Cemetery Board, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1555.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is exempt under RCW 34.05.328 (5)(b)(iv), rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect. This proposal corrects typographical errors and clarifies language without changing intended effect in WAC 246-500-055.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The proposal corrects typographical errors and clarifies language without changing the intended effect in WAC 246-500-055.

Scope of exemption for rule proposal:

Is fully exempt.

January 31, 2023
Michelle A. Davis
Executive Director

OTS-4319.1

AMENDATORY SECTION (Amending WSR 21-01-039, filed 12/7/20, effective 1/7/21)

WAC 246-500-055 Human remains reduced through natural organic reduction. (1) Other than the provisions of this section and WAC 246-500-010, this chapter does not apply to human remains after natural organic reduction.

(2) A natural organic reduction facility operator shall:

(a) Collect material samples for analysis that are representative of each instance of natural organic reduction using a sampling method such as described in the U.S. Composting Council 2002 Test Methods for the Examination of Composting and Compost, Method 02.01-A through E;

(b) Analyze each instance of reduced human remains for physical contaminants. Reduced remains must have less than 0.01 mg/kg dry weight of physical contaminants which include, but are not limited to, intact bone, dental (~~fillings~~) fillings, and medical implants;

- (c) Analyze, using a third-party laboratory, the reduction facility's reduced human remains according to the following schedule:
 - (i) The reduction facility's initial (~~(twenty)~~) 20 instances of reduced human remains for the parameters identified in Table 500-A, and any additional instances of human remains necessary to achieve (~~(twenty)~~) 20 reductions meeting the limits identified in Table 500-A;
 - (ii) Following (~~(twenty)~~) 20 reductions meeting limits outlined in Table 500-A, analyze, at minimum, (~~(twenty-five)~~) 25 percent of a facility's monthly instances of reduced human remains for the parameters identified in Table 500-A until (~~(eighty)~~) 80 total instances have met the requirements in Table 500-A;
 - (iii) The local health jurisdiction may require tests for additional parameters under (b) and (c) of this subsection(~~(-)~~);
 - (d) Not release any human remains that exceed the limits identified in Table 500-A; (~~and~~)
 - (e) Prepare, maintain, and provide upon request by the local health jurisdiction, an annual report each calendar year. The annual report must detail the facility's activities during the previous calendar year and must include the following information:
 - (i) Name and address of the facility;
 - (ii) Calendar year covered by the report;
 - (iii) Annual quantity of reduced human remains;
 - (iv) Results of any laboratory analyses of reduced human remains;
 - and
 - (v) Any additional information required by the local health jurisdiction(~~(-)~~); and
 - (f) Test for arsenic, cadmium, lead, mercury, and selenium, and either fecal coliform or salmonella in reduced human remains to meet the testing parameters and limits identified in Table 500-A.

**Table 500-A
Testing Parameters**

Metals and other testing parameters	Limit (mg/kg dry weight), unless otherwise specified
Fecal coliform	< 1,000 Most probable number per gram of total solids (dry weight)
or	
Salmonella	< 3 Most probable number per 4 grams of total solids (dry weight)
<u>and</u>	
Arsenic	≤ 20 ppm
Cadmium	≤ 10 ppm
Lead	≤ 150 ppm
Mercury	≤ 8 ppm
Selenium	≤ 18 ppm

- (3) A local registrar, in cooperation with the Washington state funeral and cemetery board, may issue a burial-transit permit for disposition of human remains reduced through natural organic reduction. The permit for the disposition of remains reduced through natural organic reduction may be used in connection with the transportation of remains reduced through natural organic reduction by common carrier or other means.
- (4) The local registrar or the department of health may issue a burial-transit permit for the disposition of human remains reduced

through natural organic reduction which have been in the lawful possession of any person, firm, corporation, or association for a period of (~~ninety~~) 90 days or more. This permit will specify that the disposition of remains reduced through natural organic reduction must be consistent with Washington state laws and rules.

[Statutory Authority: RCW 43.20.050 (2) (f). WSR 21-01-039, § 246-500-055, filed 12/7/20, effective 1/7/21.]