



# PROPOSED RULE MAKING

**CR-102 (July 2022)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: July 18, 2023

TIME: 10:50 AM

WSR 23-15-092

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); or

Proposal is exempt under RCW \_\_\_\_\_.

Title of rule and other identifying information: (describe subject) WAC 246-247-035, National standards adopted by reference for sources of radionuclide emissions. The Department of Health (department) is proposing an amendment to the federal rule publication date to conform to U.S. Environmental Protection Agency (EPA) requirements.

Hearing location(s):

Date: Time: Location: (be specific) Comment:

Date:	Time:	Location: (be specific)	Comment:
08/30/2023	1:00 PM	The Department of Health will hold a virtual only hearing.  Register in advance for this webinar:  <a href="https://us02web.zoom.us/webinar/register/WN_l84tpmXSSxS6nfc4lEIOcQ">https://us02web.zoom.us/webinar/register/WN_l84tpmXSSxS6nfc4lEIOcQ</a>  After registering, you will receive a confirmation email containing information about joining the webinar.	

Date of intended adoption: 09/06/2023 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Department of Health C/O Nina Helpling  
Address: PO Box 47820, Olympia WA 98504-7820  
Email: radruleupdates@doh.wa.gov  
Fax: N/A  
Other: <https://fortress.wa.gov/doh/policyreview>  
By (date) 08/30/2023

Assistance for persons with disabilities:

Contact: Nina Helpling  
Phone: (360) 236-3065  
Fax: N/A  
TTY: 711  
Email: nina.helpling@doh.wa.gov  
Other: N/A  
By (date) 08/23/2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed rule updates the publication date of federal rules adopted by reference under 40 C.F.R. Part 61 from 2022 to the most recently adopted 2023 version in WAC 246-247-035. The proposed amendment makes no changes to any requirements previously

adopted, but is a requirement that the department adopts the annual updated publication date into state rule to receive full delegation of the Radionuclide Air Emissions Program from EPA.

**Reasons supporting proposal:** The intent of RCW 70A.388.040 is to safely regulate the possession and use of radioactive material within the state of Washington. The intent of RCW 70A.388.050(5) is to reduce redundant licensing requirements. The rule meets the intent of the statutes by adopting requirements as stringent as the federal requirements in order for the department to have full delegation authority from EPA.

**Statutory authority for adoption:** RCW 70A.388.040 and RCW 70A.388.050(5)

**Statute being implemented:** RCW 70A.388.040 and RCW 70A.388.050(5)

**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

**Type of proponent:**  Private  Public  Governmental

**Name of proponent:** (person or organization) Department of Health

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting:Nina Helpling	111 Israel Rd SE, Tumwater, WA 98501	(360) 236-3065
Implementation: John Martell	309 Bradley Blvd, Suite201, Richland, WA 99352	(360) 946-3798
Enforcement: John Martell	309 Bradley Blvd, Suite201, Richland, WA 99352	(360) 946-3798

**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)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

**Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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: EPA publishes a new version of 40 CFR Part 61 – National Emissions Standards for Hazardous Air Pollutants (NESHAP) each year regardless if changes were made to the regulations. This rule proposal is necessary to update the EPA referenced publication date of 40 CFR Part 61 from 2021 to 2022 in WAC 246- 247-035 to remain consist between federal and state rules and as a primary condition for delegation of the NESHAP authority from EPA to the department. If Washington does not adopt the proposed changes, the department would not receive full delegation as required by EPA.

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)(c) (Incorporation by reference)
- [RCW 34.05.310](#) (4)(d) (Correct or clarify language)
- [RCW 34.05.310](#) (4)(e) (Dictated by statute)
- [RCW 34.05.310](#) (4)(f) (Set or adjust fees)
- [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 19.85.025\(4\)](#) (does not affect small businesses).

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

Explanation of how the above exemption(s) applies to the proposed rule: The agency is exempt from requirements of the Regulatory Fairness Act because the proposed rule only incorporates by reference the most recent version of the federal standards necessary for the department to maintain full delegation as required by EPA.

**(2) Scope of exemptions:** *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs.
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact 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:** 7/18/2023

**Name:** Kristen Peterson, JD for Umair A. Shah, MD, MPH

**Title:** Chief of Policy for Secretary of Health

**Signature:**

A handwritten signature in cursive script, appearing to read "Kristen Peterson".

**WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions.** (1) In addition to other requirements of this chapter, the following federal standards, as in effect on July 1, ((2022)) 2023, are adopted by reference except as provided in subsection (2) of this section.

(a) For federal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart H - National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.

(iii) 40 C.F.R. Part 61, Subpart I - National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.

(iv) 40 C.F.R. Part 61, Subpart Q - National Emission Standards for Radon Emissions From Department of Energy Facilities.

(b) For nonfederal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart B - National Emission Standards for Radon Emissions From Underground Uranium Mines.

(iii) 40 C.F.R. Part 61, Subpart K - National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants.

(iv) 40 C.F.R. Part 61, Subpart R - National Emission Standards for Radon from Phosphogypsum Stacks.

(v) 40 C.F.R. Part 61, Subpart T - National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings.

(vi) 40 C.F.R. Part 61, Subpart W - National Emission Standards for Radon Emissions From Operating Mill Tailings.

(2) References to "Administrator" or "EPA" in 40 C.F.R. Part 61 include the department of health except in any section of 40 C.F.R. Part 61 for which a federal rule or delegation indicates that the authority will not be delegated to the state.