

DATE: August 21, 2023

TIME: 11:02 AM

WSR 23-17-128



# PROPOSED RULE MAKING

## CR-102 (July 2022)

### (Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

**Agency:** Department of Health

- Original Notice**  
 **Supplemental Notice to WSR**  
 **Continuance of WSR**

- Preproposal Statement of Inquiry was filed as WSR** 23-04-060; 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 246-254-053 Radiation Machine Facility Fees. The Department of Health (department) is proposing to increase fees to cover the costs of operating the Radiation Machine Facility Program. The department is also proposing changes to machine categories within the fee schedule.

#### Hearing location(s):

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

9/26/2023

1:30 PM

The Department of Health will hold a virtual only hearing.

Register in advance for this webinar:

[https://us02web.zoom.us/webinar/register/WN\\_kWQxzwIAQUyyFOKe2i21og](https://us02web.zoom.us/webinar/register/WN_kWQxzwIAQUyyFOKe2i21og)

After registering, you will receive a confirmation email containing information about joining the webinar.

**Date of intended adoption:** 10/3/2023 (Note: This is **NOT** the effective date)

#### Submit written comments to:

Name: Peter Beaton  
 Address: Division of Environmental Public Health  
 Post Office Box 47820 Olympia, WA 98504-7820  
 Email: peter.beaton@doh.wa.gov  
 Fax: N/A  
 Other: <https://fortress.wa.gov/doh/policyreview>  
 By (date) 9/26/2023

#### Assistance for persons with disabilities:

Contact Richard Montemarano  
 Phone: 360-522-3774  
 Fax: N/A  
 TTY: 711  
 Email: richard.montemarano@doh.wa.gov  
 Other: N/A  
 By (date) 9/19/2023

#### Purpose of the proposal and its anticipated effects, including any changes in existing rules

The department completed an initial assessment of the radiation machine (X-ray) facilities program fiscal resources detailed in WAC 246-254-053 and determined the program is not generating sufficient revenue to cover the cost of the program and is therefore proposing a fee increase.

The department is also proposing changes to machine categories within the fee schedule which will allow the department to better track and manage X-ray Machines across Washington. This also allows the department to be more efficient in regulatory and inspection processes.

**Reasons supporting proposal:** The department is authorized under RCWs 43.20B.020, 43.70.250, and 70A.388.050 to administer the program and charge fees that are sufficient to cover the cost of administering the program. The department is also required under RCW 43.70.110 to charge licensing fees to businesses based on the cost of regulating the licensed activity. The fee increase is necessary because the program is currently not generating sufficient revenue to meet the cost of the program.

Proposed changes to machine categories will allow the department to be more efficient in regulatory and inspection processes.

**Statutory authority for adoption:** RCW 70A.388.050, 43.20B.020, 43.70.110, 43.70.250

**Statute being implemented:** RCW 70A.388.050, 43.20B.020, 43.70.110, 43.70.250

**Is rule necessary because of a:**

- Federal Law?  Yes  No
- Federal Court Decision?  Yes  No
- State Court Decision?  Yes  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:	Peter Beaton	111 Israel Rd SE Tumwater WA 98501	360 236-4031
Implementation:	Richard Montemarano	111 Israel Rd SE Tumwater WA 98501	360 522-3774
Enforcement:	Richard Montemarano	111 Israel Rd SE Tumwater WA 98501	360 522-3774

**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: Under RCW 34.05.328(5)(b)(vi) a cost-benefit analysis is not required for proposed rules that set or adjust fees.

**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:

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:

- |   |  |
|---|--|
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>((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 proposed rule adjusts fees.

**(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:** August 21, 2023

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

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

**Signature:**

A handwritten signature in cursive script that reads "Kristin Peterson".

**WAC 246-254-053 Radiation machine facility fees.** (1) A registrant shall comply with chapter 246-224 WAC when registering radiation machine facilities. A registrant shall pay the following applicable radiation machine facility registration fees and radiation machine tube fees for each radiation machine facility and tube annually as identified in Table A and B of this section.

Table A

<b>((Radiation Machine Facility Registration Fees</b>		
<b>Type of Radiation Machine Facility</b>		<b>Registration Fee per Facility</b>
(a)	Dental, podiatric, veterinary uses	\$107
(b)	Hospital, medical, chiropractic uses	\$207
(c)	Industrial, research, educational, security, or other facilities	\$107
(d)	Mammography only	\$89
(e)	Bone densitometry only	\$89
(f)	Electron microscopes only	\$89
(g)	Bomb squad only	(\$89))
<u>Radiation Machine Facility Registration Fee</u>		<u>\$195</u>

Table B

<b>((Radiation Machine Tube Fees</b>		
<b>Type of Tube</b>		<b>Fee per Tube</b>
(a)	Dental (intraoral, panoramic, cephalometric, dental radiographic, and dental CT)	\$27
(b)	Veterinary (radiographic, fluoroscopic, portable, mobile)	\$46
(c)	Podiatric uses (radiographic, fluoroscopic)	\$46
(d)	Mammography	N/A
(e)	Bone densitometry	N/A
(f)	Electron microscope	N/A
(g)	Bomb squad	N/A
(h)	Medical radiographic (includes R/F combinations, fixed, portable, mobile)	\$131
(i)	Medical fluoroscopic (includes R/F combinations, C-arm, Simulator, fixed, portable, mobile)	\$131
(j)	Therapy (Grenz-Ray, Orthovoltage, nonaccelerator)	\$131
(k)	Accelerators (therapy, other medical uses)	\$131
(l)	Computer tomography (CT, CAT scanner)	\$131
(m)	Stereotactic (mammography)	\$107
(n)	Industrial radiographic	\$46
(o)	Analytical, X-ray fluorescence	\$46
(p)	Industrial accelerators	\$46
(q)	Airport baggage	\$27
(r)	Cabinet (industrial, security, mail, other)	\$27

<b>((Radiation Machine Tube Fees</b>		
<b>Type of Tube</b>		<b>Fee per Tube</b>
(s)	Other industrial uses (includes industrial fluoroscopic uses)	\$27)

<b>Radiation Machine Tube Fees</b>		
<b>Category</b>	<b>Machine Type</b>	<b>Fee</b>
<b>Dental</b>	<u>Intraoral</u>	<u>\$58</u>
	<u>Handheld</u>	<u>\$58</u>
	<u>Panoramic/Cephalometric</u>	<u>\$58</u>
	<u>Cone Beam CT</u>	<u>\$58</u>
	<u>Educational</u>	<u>\$58</u>
	<u>Radiographic/Other</u>	<u>\$58</u>
<b>Veterinary</b>	<u>Radiographic</u>	<u>\$77</u>
	<u>Portable</u>	<u>\$77</u>
	<u>Dental</u>	<u>\$77</u>
	<u>Cone Beam CT</u>	<u>\$77</u>
	<u>Fluoroscopic</u>	<u>\$112</u>
	<u>Computed Tomography</u>	<u>\$191</u>
<b>Podiatry</b>	<u>Radiographic</u>	<u>\$86</u>
	<u>Cone Beam CT</u>	<u>\$86</u>
	<u>Educational</u>	<u>\$86</u>
	<u>Handheld</u>	<u>\$86</u>
	<u>Fluoroscopic</u>	<u>\$231</u>
<b>Medical Radiographic</b>	<u>Fixed</u>	<u>\$246</u>
	<u>Mobile</u>	<u>\$246</u>
	<u>Portable</u>	<u>\$246</u>
	<u>Cone Beam CT</u>	<u>\$246</u>
	<u>Educational</u>	<u>\$246</u>
<b>Fluoroscopic</b>	<u>C-arm</u>	<u>\$231</u>
	<u>Micro Amperage (Mini) C-arm</u>	<u>\$231</u>
	<u>O-arm</u>	<u>\$231</u>
	<u>Specialty Rooms</u>	<u>\$231</u>
	<u>Under Table</u>	<u>\$231</u>
	<u>Educational</u>	<u>\$231</u>
	<u>Other</u>	<u>\$231</u>
<b>Therapy</b>	<u>Accelerator (Linear)</u>	<u>\$334</u>
	<u>Nonaccelerator</u>	<u>\$334</u>
	<u>Superficial Radiation Therapy (Dermatology)</u>	<u>\$334</u>
	<u>Educational</u>	<u>\$334</u>
	<u>Other</u>	<u>\$334</u>
<b>Computed Tomography</b>	<u>Diagnostic</u>	<u>\$783</u>
	<u>Simulation</u>	<u>\$490</u>
	<u>Attenuation Correction (PET/SPECT)</u>	<u>\$490</u>
	<u>Portable</u>	<u>\$783</u>
	<u>Mobile</u>	<u>\$783</u>
	<u>Educational</u>	<u>\$783</u>

<b>Radiation Machine Tube Fees</b>		
<b>Category</b>	<b>Machine Type</b>	<b>Fee</b>
<b>Mammography</b>	Standard (including tomography)	\$0
	Stereotactic Mammography	\$55
<b>Bone Densitometer</b>	Standard	\$84
	Body Composition Scanner	\$84
<b>Industrial</b>	Cabinet X-Ray	\$133
	Blood Irradiator	\$133
	Specimen Analyzer	\$133
	Medical Examiner	\$133
	Vault (less than 1MeV)	\$167
	Vault (greater than 1MeV)	\$331
	Open Beam Radiography	\$133
	Particle Accelerator	\$331
<b>Security</b>	Body Scanner	\$133
	Baggage Scanner	\$133
	Bomb Squad	\$133
	Back Scatter	\$133
<b>Analytical</b>	Cabinet XRF	\$133
	Handheld XRF	\$133
	X-Ray Diffraction	\$133
<b>Electron Microscopes</b>	Electron Microscopes	\$0

(2) Radiation shielding plan review fees. Radiation machine facilities regulated under the shielding plan requirements of WAC 246-225-030, 246-226-030, or 246-227-150 are subject to a (~~three hundred forty-four dollar~~) \$778 radiation shielding review fee for each X-ray room plan submitted:

(a) A registrant may request an expedited plan review for (~~one thousand dollars~~) \$2,339 for each X-ray room plan. An expedited plan means the department will complete the plan review within two business days of receiving all required information from the registrant.

(b) If a radiation machine facility regulated under WAC 246-225-030, 246-226-030, or 246-227-150 operates without submittal and departmental review of radiation shielding calculations and a floor plan it will be subject to a shielding design follow-up fee of (~~six hundred fifty-six dollars~~) \$1,561 in addition to the \$778 radiation shielding review fee.

(3) Inspection fees.

(a) The cost of routine, periodic inspections, including the initial inspection, are covered under fees as described in subsection (1) of this section.

(b) Radiation machine facilities requiring follow-up inspections due to uncorrected noncompliance events must pay an inspection follow-up fee of (~~one hundred eighteen dollars~~) \$1,281 for each reinspection required.

(4) The annual radiation machine facility registration fees and radiation machine tube fees are not transferable to another geographical location or registrant.