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| Concise Explanatory StatementChapter 246-230 WAC, Security Screening Systems |  |

WAC 246-230-001 Authority, purpose, and scope.

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| **Comment Received** | **Department of Health Determination** |
| Recommend including the following in WAC 246-230-001:“The use of the scanner is to protect human dignity by reducing or eliminating strip searches.” | **No change to proposed rule.** The department’s authority is limited to establishing radiation safety standards for the use of security screening systems using ionizing radiation. Including this sentence is outside the scope of this rulemaking activity and outside of the department’s jurisdiction. |
| Visitors go through a body scanner that does not use any radiation but instead operates on echolocation. The method and potential health risks should be clearly stated on the machine, in the search area, and at the entrance to the facility. Staff working in body scanning areas should be properly trained in regard to what method is used. | **No change to proposed rule.** [RCW 70A.388.040](https://app.leg.wa.gov/RCW/default.aspx?cite=70A.388.040) gives the department the authority to adopt rules relating to the control of sources of ionizing radiation. The department does not have the authority to regulate scanners that use echolocation. |
| A link to the DOC policy for operating ionizing full body scanners should be included in the DOH rules for security screening systems. | **No change to proposed rule.** This chapter applies to correctional facilities, jails, and detention facilities, not just the department of corrections.  |
| Recommendations to prevent contraband from coming into prisons:* Unless a person has a medical exemption, every adult, including incarcerated individuals, employees, visitors, volunteers, contractors, etc. should be scanned with a millimeter wave scanner every time they enter the prison/facility perimeter.
* If the millimeter wave scan shows that an incarcerated individual may possess contraband, that person should be scanned with a transmission x-ray scanner.
* All items being brought into a prison/facility including but not limited to backpacks, duffel bags, briefcases, food containers, jackets, and shoes should be scanned with an X-ray transmission scanner.
* Dogs trained to alert for contraband should be present at public access and sniff everyone before they are allowed to enter the facility.
* These dogs should also be taken into the visitation room to search for contraband.
 | **No change to proposed rule.** This is outside the scope of the department’s authority. |
| WAC 246-230-010 Definitions. |
| **Comment Received** | **Department of Health Determination** |
| Recommend including RCW 10.79.070 definitions of “strip search,” “body cavity search,” and “body cavity”. | **No change to proposed rule**. The terms “strip search” and “body cavity search” are not used in the rule and therefore do not need to be defined. “Body cavity” is used, however is a commonly used term that does not require a definition. |
| Recommend defining “juvenile.” Persons who were convicted of felonies before age 18 and housed in a detention facility may remain there until reaching age 25. Are they still considered juveniles?  | **No change to proposed rule**. WAC 246-230-025 Authorized use states security screening systems “must not be used to screen such individuals who are: (a) Minors…” "Minor" is defined in WAC 246-230-010 as “an individual less than 18 years of age.” |
| Recommend including definition of “qualified expert” rather than referencing WAC 246-220-010. | **Adopt rule with amendment**. The department will define “qualified expert” using the definition from WAC 246-220-010 instead of referencing it.  |
| Recommend clarifying the difference between a “screening” and a “scan” in the definitions. | **Adopt rule with amendment**. The department will define “scan” to provide clarification. |
| WAC 246-230-020 security screening system requirements. |
| **Comment Received** | **Department of Health Determination** |
| Recommend general-use security screening systems over limited-use systems. | **No change to proposed rule**. The proposed rule allows screening for contraband with a general-use security screening system. The proposed rule does not allow limited-use security screening systems unless a variance is obtained from the department. |
| Why are warning signs posted if ionizing radiation is safe? | **No change to proposed rule**. Displaying a warning sign on the system as required in WAC 246-230-020(3)(e) is consistent with ANSI/HPS N43.17- 2009. |
| WAC 246-230-025 Authorized use. |
| **Comment Received** | **Department of Health Determination** |
| Recommend adding the following to subsection (1):(e) Individuals with pacemakers.(f) Individuals confined to wheelchairs. (g) Individuals who cannot stand alone, unsupported during the scan.(h) Individuals deemed by licensed health care practitioner to have recently undergone chemotherapy/radiation therapy. | **No change to proposed rule**. WAC 246-230-025(1)(c): “Health compromised as determined by a licensed health care practitioner;” encompasses these. |
| WAC 246-230-030 Operating requirements of security screening system. |
| **Comment Received** | **Department of Health Determination** |
| Recommend including the following emergency procedures:* In cases of emergency (malfunctioning equipment, short circuit, electric circuit fault, mechanical break of any parts) the operator must press the Emergency Stop button on the control panel or inside the machine above the platform; switch off the scanner and the computer; and contact the watch commander.
* The operator must remove all individuals from the area.
* The watch commander must notify the radiation safety officer (RSO) and the machine must not be used.
* A lockout tag must be placed on the equipment and not removed until authorized by the RSO.
* The key required to operate the machine must also be removed from service.
 | **No change to proposed rule**. The registrant shall develop a training program in consultation with a qualified expert and must include “(d) Procedures to follow if the security screening system is damaged or malfunctions; and (e) Supervised operations of the security screening system in accordance with the manufacturer's operations manual and facility procedures.” These items will be addressed by the registrant and a qualified expert within these procedures as to be site-specific to each facility and security screening system. |
| Recommend changing “screening area” in subsection (5)(c) to “radiation screening zone” to be consistent with the definition listed.  | **Adopt rule with amendment**. The department will amend WAC 246-230-030(5)(c) to read “radiation screening zone”. |
| Pregnant staff members should not be allowed to operate scanners. | **No change to proposed rule**. WAC 246-230-005, Relationship to other regulations, requires registrants to also comply with chapters 246-220 and 246-221 WAC which outline radiation exposure standards and pregnancy protections. |
| There should be a limit to how many scans an operator can perform in a day. There also should be guidance as to how many scans they can perform in 30 or 60 minutes.  | **No change to proposed rule**. WAC 246-230-005, Relationship to other regulations, requires registrants to also comply with chapter 246-221 WAC which outlines occupational dose limits. |
| Requirements for shielding operators during scans should be added. | **No change to proposed rule**. WAC 246-230-020(5) outlines shielding requirements. |
| Operators should wear badges that keep track of their radiation level. | **No change to proposed rule**. WAC 246-230-005, Relationship to other regulations, requires registrants to also comply with chapter 246-221 WAC which requires individuals to wear monitoring devices (dosimetry badges) if they are likely to receive more than 10% of their annual dose limit. |
| WAC 246-230-040 dose limits. |
| **Comment Received** | **Department of Health Determination** |
| Recommend changing “calendar year” in subsection (3) to “any 12-month period”. | **No change to proposed rule**. Dose limits outlined in WAC 246-230-040 are consistent with ANSI/HPS N43.17- 2009. |
| Recommend a limit of three scans of an incarcerated individual per day. | **No change to proposed rule**. Dose limits outlined in WAC 246-230-040 are consistent with ANSI/HPS N43.17- 2009 and ensure the lowest amount of radiation is used per screening.  |
| WAC 246-230-050 requirements for tracking dosage. |
| **Comment Received** | **Department of Health Determination** |
| Recommend changing “per calendar year” in subsection (1)(b) to “any 12-month period”.  | **No change to proposed rule** Dose limits outlined in WAC 246-230-040 are consistent with ANSI/HPS N43.17- 2009. |
| WAC 246-230-060 information to be provided to scanned individuals. |
| **Comment Received** | **Department of Health Determination** |
| Recommend the following information be provided to scanned individuals:* Dose records are provided to an individual annually with full explanation and in every language that is necessary to ensure that all individuals fully understand the implications of the radiation dosage they have received.
* Records should explain what constitutes a safe level of exposure and what the possible health risks are.
 | **No change to proposed rule**. WAC 246-230-050(3) requires dose records to be provided to an individual upon request. Radiation doses are best supplied to an individual with an explanation from a medical professional. A value summarized by the machine is not a whole body exposure. |
| Recommend records be provided to scanned individuals showing exposure levels more often than once a year. | **No change to proposed rule**. WAC 246-230-050(3) requires dose records to be provided to an individual upon request. |
| The incarcerated should be able to opt out of the body scanners. Visitors are put in the uncomfortable position of having to weigh the health risks of radiation on our loved ones, against the opportunity to spend time with them. | **No change to proposed rule**. WAC 246-230-060(3) requires the registrant to notify an individual of any available alternative screening options. |
| WAC 246-230-070 radiation surveys. |
| **Comment Received** | **Department of Health Determination** |
| Recommend inspections of DOC facilities occur unannounced. | **No change to proposed rule**. The department has the authority to inspect facilities announced or unannounced, however a qualified expert completing a radiation survey is a contracted position that cannot be unannounced. |
| Recommend the following requirements for screening visitors:* Provide a record of radiation levels with full explanation and in every language that is necessary to ensure that all visitors fully understand the implications of the radiation doses they receive.
* Such records will be provided to the visitors on an annual basis.
* Radiation surveys shall be completed on scanners used on visitors.
* Prominently display the method of scanning used as well as any and all potential health risks associated with repeated body scans.
 | **No change to proposed rule.** WAC 246-230-025, Authorized use, states “(1) A security screening system may only be used to screen an individual who has been committed to a correctional facility or who has been presented for confinement in a jail or detention facility.”[RCW 70A.388.040](https://app.leg.wa.gov/RCW/default.aspx?cite=70A.388.040) gives the department the authority to adopt rules relating to the control of sources of ionizing radiation. The department does not have the authority to regulate the scanners used to screen visitors because they do not utilize ionizing radiation. |
| Recommend change to subsection (1) to add “**independent”** qualified expert. | **No change to proposed rule**. The definition of “qualified expert” means “an individual who has demonstrated to the satisfaction of the department the knowledge, training, and experience to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs. The department reserves the right to recognize the qualifications of an individual in specific areas of radiation protection.” This eliminates any conflict of interest. |

Notes: The Department of Health did not receive written comments for sections:

* WAC 246-230-005, Relationship to other regulations,
* WAC 246-230-015, Registration,
* WAC 246-230-080, Records, or
* WAC 246-230-090, Variance Request.

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