

## WSR 23-15-092

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed July 18, 2023, 10:50 a.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 246-247-035 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 United States Environmental Protection Agency (EPA) requirements.

Hearing Location(s): On August 30, 2023, at 1:00 p.m. The department will hold a virtual-only hearing. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_l84tpmXSSxS6nfc4lEI0cQ](https://us02web.zoom.us/webinar/register/WN_l84tpmXSSxS6nfc4lEI0cQ). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: September 6, 2023.

Submit Written Comments to: Department of Health, C/O Nina Helpling, P.O. Box 47820, Olympia, WA 98504-7820, email [radruleupdates@doh.wa.gov](mailto:radruleupdates@doh.wa.gov), <https://fortress.wa.gov/doh/policyreview>, by August 30, 2023.

Assistance for Persons with Disabilities: Contact Nina Helpling, phone 360-236-3065, TTY 711, email [nina.helpling@doh.wa.gov](mailto:nina.helpling@doh.wa.gov), by August 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 70A.388.050(5).

Statute Being Implemented: RCW 70A.388.040 and 70A.388.050(5).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Nina Helpling, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3065; Implementation and Enforcement: John Martell, 309 Bradley Boulevard, Suite 201, Richland, WA 99352, 360-946-3798.

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. 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.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: EPA publishes a new version of 40 C.F.R. 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 C.F.R. Part 61 from 2021 to 2022 in WAC 246-247-035 to remain consistent 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.

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of exemptions: The department 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.

Scope of exemption for rule proposal:

Is fully exempt.

July 18, 2023  
 Kristen Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

#### OTS-4674.1

AMENDATORY SECTION (Amending WSR 23-04-063, filed 1/27/23, effective 2/27/23)

**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 Emissions 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.

[Statutory Authority: RCW 70A.388.040 and 70A.388.050(5). WSR 23-04-063, § 246-247-035, filed 1/27/23, effective 2/27/23. Statutory Authority: RCW 70A.388.040, 70A.388.050(5) and 2020 c 20. WSR 21-22-118, § 246-247-035, filed 11/3/21, effective 12/4/21. Statutory Authority: RCW 70.98.050 and 70.98.080(5). WSR 19-23-039, § 246-247-035, filed 11/12/19, effective 12/13/19. Statutory Authority: RCW 70.98.050, 70.98.080(5) and 40 C.F.R. 63.91. WSR 19-04-042, § 246-247-035, filed 1/29/19, effective 3/1/19. Statutory Authority: RCW 70.98.050 and 70.98.080(5). WSR 18-12-075, § 246-247-035, filed 6/1/18, effective 7/2/18; WSR 17-13-037, § 246-247-035, filed 6/13/17, effective 7/14/17. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 16-15-083, § 246-247-035, filed 7/19/16, effective 8/19/16; WSR 16-06-003, § 246-247-035, filed 2/17/16, effective 3/19/16. Statutory Authority: RCW 70.98.050 and 70.98.080(5). WSR 12-01-071, § 246-247-035, filed 12/19/11, effective 1/19/12. Statutory Authority: RCW 70.98.050. WSR 05-12-059, § 246-247-035, filed 5/26/05, effective 6/26/05.]