

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
NOTICE OF PUBLIC HEARING

December 17, 2019  
1:00 p.m. Central Time  
Nebraska State Office Building – Lower Level B  
301 Centennial Mall South, Lincoln, Nebraska

The purpose of this hearing is to receive comments on proposed changes to Title 180, Chapter 22 of the Nebraska Administrative Code (NAC) – *Shipment of High Level Radioactive or Transuranic Waste*. The chapter establishes fees for shipment of high-level radioactive waste and transuranic waste. The proposed changes remove duplicative statutory language and unnecessary language from the regulations and update formatting.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Interested persons may attend the hearing and provide verbal or written comments or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or [dhhs.regulations@nebraska.gov](mailto:dhhs.regulations@nebraska.gov), respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

## FISCAL IMPACT STATEMENT

Agency: <b>Department of Health and Human Services</b>	
Title: 180	Prepared by: Julia Schmitt
Chapter: 22	Date prepared: 05/20/2019
Subject: Shipping of High Level Radioactive Waste of Transuranic Waste	Telephone: 402-471-0528

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	( <input checked="" type="checkbox"/> )	( <input checked="" type="checkbox"/> )	( <input checked="" type="checkbox"/> )
Increased Costs	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Decreased Costs	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Increased Revenue	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Decreased Revenue	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )
Indeterminable	( <input type="checkbox"/> )	( <input type="checkbox"/> )	( <input type="checkbox"/> )

Provide an Estimated Cost & Description of Impact:

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

# PROPOSED REGULATION QUESTIONNAIRE

## Title 180 NAC 22

1) Is the regulation essential to the health, safety, or welfare of Nebraskans?

Yes. The Legislature intended that costs incurred by the State of Nebraska attributable to the shipment of high-level radioactive waste and transuranic waste in or through the state be borne by the shipper. Without 180 NAC 22 the shippers of high level radioactive waste would not know what the fee is. High-level wastes are hazardous because they produce fatal radiation doses during short periods of direct exposure. The waste is packaged for transport in very robust shipping containers that protect against radiation harming people or the environment in an accident scenario. A significant amount of planning, preparation and interaction occurs between the shipper and state agencies prior to and during the shipment. The Nebraska Emergency Management Agency coordinates the emergency response capability. They work with the shipper to plan the shipment and ensures that local agencies along the shipping route are trained, prepared and equipped in the event of an emergency. The State Patrol is notified in advance of the dates and times of the shipments and may inspect the shipment through their Carrier Enforcement Division. They may escort the shipment and are able to monitor the location of the shipment at all times. Should the shipment be delayed enroute and need to be placed in a safe parking situation due to a weather or security event, the State Patrol would provide security. The response to Question #2 provides a description of what costs to state agencies are covered by the fee.

2) Do the costs of the regulation outweigh the benefits? Provide specific data and reasoning.

Yes. Until January 1, 2005, a fee of two thousand dollars was assessed on each cask of high-level radioactive waste or transuranic waste shipped in or through the state, whether shipped by motor carrier or rail. After January 1, 2005, the department established and assessed fees on all high-level radioactive waste and transuranic waste shipped by any means in or through the state. Such fees were to be equitable and used for purposes related to (1) shipping of high-level radioactive waste and transuranic waste, including, but not limited to, inspections, escorts, and security for waste shipment, planning, and maintenance, (2) coordination of emergency response capability, (3) education and training, (4) purchase of necessary equipment, and (5) administrative costs attributable to the state agencies which are incurred as related to the shipping of high-level radioactive waste and transuranic waste. The Director-State Engineer, the Superintendent of Law Enforcement and Public Safety, the chief executive officer of the department, the Adjutant General as director of the Nebraska Emergency Management Agency, and the executive director of the Public Service Commission, or their designees met to set the fee.

3) Does a process exist to measure the effectiveness of the regulation? If so, explain.

Yes. The funds generated by the fee are distributed among the agencies listed in the response to Question #2 to cover the costs of their activities associated with these shipments. This regulation communicates to the shipper what the fee is. The effectiveness of the regulation is reflected in the

budgets of the agencies listed in the response to Question #2. If the fee is insufficient to cover costs, the agencies meet to set a new fee that is then communicated in this regulation.

4) Has a less restrictive alternative been considered?

No less restrictive alternative is known. The definitions of high-level radioactive waste and transuranic waste were removed as they repeat statutory language. The exemption for military shipments was removed as it exists in statute. Instructions for communicating with the Department were removed because it repeats language that exists in 180 NAC 1.

5) Was the regulation solely promulgated due a state statutory requirement? If so, provide citations.

No. Neb. Rev. Stat. § 71-3527 The department may adopt and promulgate rules and regulations to carry out sections 71-3523 to 71-3526. The regulation exists to enforce the fees.

6) Was the regulation promulgated as the result of a federal mandate? If so, include copies of the applicable federal statutes and regulations.

No.

# PROPOSED REGULATION POLICY PRE-REVIEW CHECKLIST

**Agency:** DHHS – Division of Public Health

**Title, Chapter of Regulation:** Title 180 NAC 22

**Subject:** Shipment of High Level Radioactive or Transuranic Radioactive Waste

**Prepared by:** Julia Schmitt

**Telephone:** 402-471-0528

## **A. Policy Changes and Impacts**

1. What does the regulation do and whom does it impact? Provide a brief description of the proposed rule or regulation and its impacts on state agencies, political subdivisions, and regulated persons or entities.

This revision re-promulgates Title 180 NAC 22. The regulations were reformatted to comply with the formatting requirements of the Secretary of State. The revised regulation also removes any repeat of statutory language and unnecessary language from the regulations. These regulations establish fees for shipment of high-level radioactive waste and transuranic waste. Currently, the high-level radioactive waste and transuranic waste that travels across the state is shipped by the Department of Energy (DOE) and they pay the fee.

2. Describe changes being proposed to current policy and briefly provide rationale.

The definitions of high-level radioactive waste and transuranic waste were removed as they repeat statutory language. The exemption for waste shipped by the United States Government for military, national security, or national defense purposes was removed as it exists in statute. Instructions for communicating with the Department were removed because it repeats language that exists in 180 NAC 1.

## **B. Why is the rule necessary? Explain and provide an identification of authorizing statute(s) or legislative bill(s).**

The regulations were reformatted to comply with the formatting requirements of the Secretary of State. The revised regulations also remove any repeat of statutory language and unnecessary language from the regulations.

1. Update of regulation (repeal of obsolete statutes, reflect current policy, editing or technical language changes, etc.)

The definitions of high-level radioactive waste and transuranic waste were removed as they repeat statutory language. The exemption for military shipments was removed as it exists in statute. Instructions for communicating with the Department were removed because it repeats language that exists in 180 NAC 1.

2. Annual changes – cost of living, hunting season schedules, etc.

No.

3. Law was changed – federal \_\_\_\_ or state \_\_\_\_ [Cite authorizing statute(s) or legislative bill(s)] N/A.

4. Extension of established policy or program, new initiatives or changes in policy (within statutory authority) No

5. Constituent initiated No

6. Financial needs – increases/decreases in fees No

7. Litigation requires changes in rules No

8. Addresses legal or constitutional concerns of Attorney General’s office No

9. Implements federal or court mandate No

10. Other (explain)

**C. What happens if these rules are not adopted?**

Unnecessary or redundant regulations would remain in place.

**D. Policy Checklist**

1. Is this an update or editorial change reflecting essentially no change in policy? Yes

2. Does the policy in the proposed regulation reflect legislative intent? Yes

3. Is the policy proposed in the regulation a state mandate on local government? No Is it funded? N/A

4. Is the policy proposed in the regulation a federal mandate on local government? No Is it funded? N/A

**E. Fiscal Impact. In addition to completing the required Fiscal Impact Statement (a copy must be attached to this document), the agency must address the following:**

No fiscal impact.

1. Will the proposed regulation reduce, increase, or have no change in resources – funds, personnel or FTE? No change.
2. Have initial contacts been made with citizens or organizations that may be impacted by the proposed regulation? No, because the changes are formatting and editorial. We will solicit public comment before a public hearing.
3. Does the proposed regulation impact another agency? No Explain the impact.
4. Will the proposed regulation reduce, increase, or have no change on reporting requirements of businesses? No change
5. What is the agency's best estimate of the additional or reduced spending? If there is none, please note. If receipt of federal funds is contingent upon approval of the proposed regulation, then indicate the amount and nature of the federal funds affected, and enclose laws or correspondence from federal officials substantiating the information.

No change in spending.

6. Include a description of the impact that the proposed regulation will have on the number of state employees and how the agency intends to address proposed increases or decreases in FTE.

No Impact.

**F. Unique problems or issues and recommendations.**

No known problems or issues.

**G. Who is expected to be affected, or to oppose or support the proposed regulation? Explain what initial informal contacts have been made with organizations or citizens who may be affected by the regulation prior to the public hearing.**

No known supporters or opponents.

DHHS will solicit public comment on the proposed regulations before the public hearing.

- H. **Are these proposed rules a likely candidate for negotiated rulemaking? Explain. Has the process been completed? If so, explain how the issues were addressed.**

No.



DRAFT  
07-17-2019

NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

180 NAC 22

TITLE 180            CONTROL OF RADIATION

CHAPTER 22        SHIPPING OF HIGH LEVEL RADIOACTIVE OR TRANSURANIC WASTE

001. SCOPE AND AUTHORITY. These regulations establish fees for shipment of high-level waste and transuranic waste. The regulations are authorized by Nebraska Revised Statute (Neb. Rev. Stat.) §§ 71-3523 to 71-3528.

002. FEE PER CASK. The fee for each cask of high-level radioactive waste or transuranic waste is \$3,100.

EFFECTIVE DATE \_\_\_\_\_ NEBRASKA DEPARTMENT OF  
MARCH 30, 2009 \_\_\_\_\_ HEALTH AND HUMAN SERVICES \_\_\_\_\_ 180 NAC 22

TITLE 180 \_\_\_\_\_ CONTROL OF RADIATION

CHAPTER 22 \_\_\_\_\_ SHIPMENT OF HIGH LEVEL RADIOACTIVE OR TRANSURANIC  
WASTE

22-001 Scope and Authority .....	1
22-002 Definitions .....	1
22-003 Exemptions .....	1
22-004 Fees .....	1
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~~EFFECTIVE DATE \_\_\_\_\_ NEBRASKA DEPARTMENT OF  
MARCH 30, 2009 \_\_\_\_\_ HEALTH AND HUMAN SERVICES \_\_\_\_\_ 180 NAC 22~~

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EFFECTIVE DATE \_\_\_\_\_ NEBRASKA DEPARTMENT OF  
MARCH 30, 2009 \_\_\_\_\_ HEALTH AND HUMAN SERVICES \_\_\_\_\_ 180 NAC 22

TITLE 180 \_\_\_\_\_ CONTROL OF RADIATION

CHAPTER 22 \_\_\_\_\_ SHIPPING OF HIGH LEVEL RADIOACTIVE OR TRANSURANIC  
WASTE

22-001 SCOPE AND AUTHORITY:

22-001.01 These regulations establish fees for shipment of high-level waste and transuranic waste and responsibility for payment. The regulations are authorized by Neb. Rev. Stat. §§ 71-3523 to 71-3528. **Remains in section 001**

22-002 DEFINITIONS: As used in this Chapter, these terms have the definitions set forth below.

Department means the Department of Health and Human Services.

High Level Radioactive Waste means (1) irradiated reactor fuel, (2) liquid wastes resulting from the operation of the first cycle solvent extraction system or equivalent and the concentrated wastes from subsequent extraction cycles or equivalent in a facility for reprocessing irradiated reactor fuel, (3) solids into which such liquid wastes have been converted, and (4) other highly radioactive waste material as defined by the United States Nuclear Regulatory Commission.

Transuranic Waste means radioactive waste material containing alpha-emitting radioactive elements, with radioactive half-lives greater than five years, having an atomic number greater than 92 in concentrations in excess of one hundred nanocuries per gram.

22-003 EXEMPTIONS

Title 180 NAC 22 does not apply to high-level radioactive waste or transuranic waste shipped by or for the United States Government for military, national security, or national defense purposes. It does not require disclosure of defense information or restricted data as defined in the federal Atomic Energy Act of 1954.

22-004 FEES

22-003.01 The fees will be paid in advance of shipment by the shipper.

22-003.02 A fee of \$3,100 will be assessed on each cask of high-level radioactive waste or transuranic waste shipped by any means in or through the state. **Remains in section 002**

EFFECTIVE DATE \_\_\_\_\_ NEBRASKA DEPARTMENT OF  
MARCH 30, 2009 \_\_\_\_\_ HEALTH AND HUMAN SERVICES \_\_\_\_\_ 180 NAC 22

~~22-003.03 Payment of Fees:~~ Each shipment request will be accompanied by the fee payable to the Nebraska Department of Health and Human Services at:

Nebraska Department of Health and Human Services,  
Division of Public Health  
Radiological Health  
301 Centennial Mall South,  
P.O. Box 95026  
Lincoln, Nebraska 68509-5026.

~~22-005 COMMUNICATIONS:~~ All communications and reports concerning Title 180 NAC 22, should be addressed to the Department at its office located at:

\_\_\_\_\_ Department of Health and Human Services  
\_\_\_\_\_ Division of Public Health  
\_\_\_\_\_ Radiological Health  
\_\_\_\_\_ 301 Centennial Mall South  
\_\_\_\_\_ P.O. Box 95026  
\_\_\_\_\_ Lincoln, Nebraska 68509-5026