



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: July 16, 2021

TIME: 8:14 AM

WSR 21-15-067

Agency: Department of Labor & Industries (L&I)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: The Department of Labor & Industries (L&I) is adopting emergency rules regarding Wildfire Smoke under chapter 296-62 WAC, General Occupational Health Standards. L&I recognizes the hazard of wildfire smoke exposure is increasing every year and potentially presents serious health risks to all workers, especially those working outside in industries such as construction and agriculture. L&I has received a petition for rulemaking regarding wildfire smoke protections after the historic 2020 wildfires, which created unprecedented smoke conditions in the state. The state of California has adopted similar temporary and permanent workplace safety and health rules regarding wildfire smoke.

A major component of wildfire smoke is particulate matter with an aerodynamic diameter less than 2.5 micrometers (PM 2.5); inhalation of PM_{2.5} can cause cardiovascular health effects and increases the risk of death. PM_{2.5} is elevated during wildfire smoke events, causing a risk to workers.

This emergency rule applies to workplaces where the employer should reasonably anticipate that employees may be exposed to wildfire smoke. Exempt workplaces and operations are:

- Enclosed buildings or structures in which the employer ensures that windows, doors, bays, and other exterior openings are kept closed, except when it is necessary to open doors to enter and exit.
- Enclosed vehicles in which the air is filtered by a cabin air filter and the employer ensures that windows, doors, and other openings are kept closed except when it is necessary to open doors to enter or exit.
- Employees exposed to a concentration of PM_{2.5} of 20.5µg/m³ (equivalent Washington Air Quality Advisory Level or "WAQA" of 101, equivalent Air Quality Index or "AQI" of 69) or more for a total of one hour or less during a shift.
- Firefighters engaged in wildland firefighting.

This emergency rule includes:

- Requirements for employers to determine PM_{2.5} levels at their worksites by checking one of the listed web-based sources or directly measuring PM_{2.5} at their worksite.
- Requirements for hazard communication to notify employees when the PM_{2.5} levels reach 55.5 µg/m³ (WAQA 173, AQI 151).
- Requirements for training both supervisors and line staff who may be exposed to PM_{2.5} levels of 20.5µg/m³ (WAQA 101, AQI 69) or above on the hazards of wildfire smoke and the procedures regarding the employer's plan for ensuring workers are protected from wildfire smoke.
- Requirements for monitoring and allowing for medical care for employees who display symptoms of illness related to wildfire smoke.
- Requirements for implementation of engineering and administrative controls whenever PM_{2.5} reaches 55.5 µg/m³ (WAQA 173, AQI 151) and such controls are feasible.

- Requirements for supplying respiratory protection for employees use on a voluntary basis whenever PM_{2.5} reaches 55.5 µg/m³ (WAQA 173, AQI 151).

The emergency rule ensures that workers in Washington are provided protections from the hazard of wildfire smoke inhalation while L&I proceeds with the implementation of the wildfire smoke permanent rulemaking.

In addition, L&I filed a Preproposal Statement of Inquiry (CR-101) on October 20, 2021, WSR 20-21-093, regarding permanent rulemaking for hazards relating to wildfire smoke events. Some additions made as part of the emergency rule will be considered for permanent rulemaking. The department will be seeking comments from affected stakeholders during the permanent rulemaking process.

Citation of rules affected by this order:

New: WAC 296-62-085, 296-62-08510, 296-62-08520, 296-62-08530, 296-62-08540, 296-62-08550, 296-62-08560, 296-62-08570, 296-62-08580, 296-62-08585, and 296-62-08590.
 Repealed:
 Amended:
 Suspended:

Statutory authority for adoption: RCW 49.17.010, RCW 49.17.040, RCW 49.17.050, RCW 49.17.060 and RCW 49.17.240

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: Wildfire smoke is composed of harmful chemicals and tiny particles suspended in the air that present a significant health hazard for workers exposed to it. These particles can irritate the lungs and cause serious or even fatal health effects, such as reduced lung function, bronchitis, worsening of asthma, and heart failure. Compared with the general public, workers have additional risk factors in that they may spend more time outdoors in the smoke, and have more physical exertion, which increases the amount of smoke that they breathe into their lungs. Individuals considered sensitive to wildfire smoke exposure, such as those with asthma, are also part of the workforce.

The US Environmental Protection Agency’s (EPA) Air Quality Index (AQI) is an informational tool for reporting air quality. Under the Clean Air Act, the EPA sets and reviews national air quality standards for several air pollutants, including PM_{2.5}. AQI is a scale of 1 to 500 divided into six color-coded categories that correspond to different levels of health concerns (good, moderate, unhealthy for sensitive groups, unhealthy, very unhealthy, and hazardous). The AQI level of 101 is categorized as “unhealthy for sensitive groups” and corresponds to PM_{2.5} concentrations of 35.5 µg/m³. The Washington state Department of Ecology has an informational tool called the Washington Air Quality Advisory (WAQA). The WAQA is similar to the AQI as both use color-coded categories to show when air quality ranges from good to hazardous, however, the WAQA has lower PM_{2.5} concentrations associated with each level. For example, the WAQA index of 101 for unhealthy for sensitive s corresponds to a PM_{2.5} concentration of 20.5 µg/m³ and the WAQA level of 151 for unhealthy corresponds to a concentration PM_{2.5} 35.5 µg/m³.

California is currently the only state with rules for occupational exposure to wildfire smoke, although Oregon is in the process of developing rules. California’s rule requires employers take preventative measures when the current EPA AQI is 151 or greater (unhealthy). Specific to respirators, California’s rule requires employers to implement engineering and administrative controls and make respirators available for voluntary use at an AQI of 151 (55.4 µg/m³). Mandatory respirator use is required when the AQI is greater than 500 (500 µg/m³). Mandatory respirator use requires compliance with California’s respiratory program rules, including fit testing and medical evaluations.

For the past several summers, the L&I’s Division of Occupational Safety and Health (DOSH) received inquiries about wildfire smoke hazards for outdoor workers. DOSH has put out guidance and information on best practices but recognizes there is a gap under current rules to adequately protect workers from this hazard and to ensure employers and workers understand what is required. After the unprecedented wildfire smoke events in 2020, the department reviewed the need for rules and also received a petition requesting rulemaking. The department determined that rulemaking was needed to address the hazard. The department held five virtual stakeholder meetings from January 2021-June 2021 to discuss development of a permanent rule and emergency rules.

However, it has not been practicable to adopt a permanent rule in time for this year’s wildfire season where immediate action is necessary. Immediate adoption of a rule is necessary for the preservation of worker health and safety and it would be contrary to the public interest to wait until a permanent rule can be adopted. The fire season is imminent and existing regulations are not sufficient to protect workers from the dangers of wildfires. Washington State is experiencing an historic

drought that is exacerbating fire danger across the state, and abnormally high temperatures and dry conditions have led to the early development of dangerous fire fuel conditions throughout the state. This has been exacerbated by the recent heat waves in the Pacific Northwest. Wildfire smoke can travel hundreds to thousands of miles and wildfires in other states and in Canada can cause hazardous air quality levels in Washington. Active wildfires are occurring in Washington at this time, as well as in California, Oregon, Canada and Idaho, The Governor issued Emergency Proclamation 21-10 on July 6, 2021, implementing a statewide burn ban due to the likelihood of wildfires.

While the department provided draft emergency rules for stakeholder input, the emergency process does not allow for the opportunity for notice and comment that are part of the permanent rulemaking process.

So L&I is taking emergency action to avert the development of wildfire smoke-related illnesses among Washington’s workforce and ensure employers can train employees, plan for their response, and obtain the necessary respirators for employee voluntary use when wildfire events do happen.

Consistent with the mandate under the WISH Act, the department has looked at the best available evidence and determined that there are feasible measures to address the health hazards wildfire smoke presents for workers. The emergency rule requires employers to implement engineering and administrative controls and make respirators available for voluntary use at a PM_{2.5} concentration of 55.5 µg/m³ (unhealthy under the AQI) but encourages employers to take these actions at a PM_{2.5} concentration of 20.5 (unhealthy for sensitive groups under the WAQA). Under this approach, enforcement levels is set at the same as California, which has been a feasible approach. The permanent rule process will continue to examine the hazards of PM_{2.5} exposure levels and appropriate protections necessary.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

New	<u>11</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted on the agency’s own initiative:

New	<u>11</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>11</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Date Adopted: July 16, 2021

Name: Joel Sacks

Title: Director

Signature:

