

CONCISE EXPLANATORY STATEMENT

Voluntary use of Personal Protective Equipment (PPE)

Chapter 296-155 WAC, Safety standards for construction work: WAC 296-155-249

Chapter 296-307 WAC, Safety standards for agriculture: WAC 296-307-10030

Chapter 296-800 WAC, Safety and health core rules: WAC 296-800-16080

Public Hearing: April 23, 30, and May 2, 2024

Adoption: August 20, 2024

Effective: October 1, 2024

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I. Purpose of Rulemaking

A. Background

L&I adopted permanent rules to allow the voluntary use of personal protective equipment (PPE) when workers feel the need to protect themselves from noise, dust, or possible infectious or contagious diseases. The voluntary use of PPE must not introduce hazards to the work environment and must not interfere with an employer's security requirements.

The adopted rule models RCW 49.17.485, Personal protective devices and equipment – Public health emergency. In the event a public health emergency is declared, the adopted rule would already be effective and no material change would be needed to comply with RCW 49.17.485.

B. Summary of the rulemaking activities

The language in the adopted sections of rule closely mirrors language used in emergency rules during the COVID-19 pandemic. Since the pandemic ended, the Division of Occupational Safety and Health (DOSH) staff have heard from employees that they need a rule allowing them to voluntarily provide their own PPE and use it to protect themselves from infectious or contagious diseases.

The following organizations were directly notified by DOSH staff via phone call or association meetings:

- Associated General Contractors of WA
- Building Industry Association of WA
- Washington Hospitality Association
- Washington Public Utility Districts Association
- Washington Retail Association
- Washington State Farm Bureau

II. Changes to the Rules (Proposed rule versus rule adopted)

- Added face masks and filtering-piece respirators to list of PPE example and removed protective shields and barriers from the list of PPE examples to provide clarity of PPE options.
- Updated the references to the current respiratory protection requirements under the new section added to chapter 296-307 WAC.
- Updated the language regarding the voluntary use under this rule to the voluntary use of respirators other than considered filtering-facepiece respirators, such as elastomeric respirators, for clarity. The rule as adopted states that employers are not required to allow the voluntary use of respirators other than considered filtering-facepiece respirators, such as elastomeric respirators, under this rule and that the existing voluntary respiratory requirements under WAC 296-842-11005 and 296-842-11010/WAC 296-307-59805 and 296-307-59810 apply.
- Added a new subsection to clarify that the voluntary use of PPE under this rule does not apply to situations under existing PPE rules where an employer allows employee provided personal protective equipment to be used rather than the personal protective equipment the employer provides.

III. Comments on Proposed Rule

A. Comment Period

The public comment period was open March 5, 2024 through 5:00 p.m. May 17, 2024.

B. Public Hearings

Date	Location	Attendees	Testified
April 23, 2024	Spokane	1	0
April 30, 2024	Tukwila	4	0
May 2, 2024	Virtual via Zoom	23	1

C. Summary of Comments Received and L&I's Response

General Comments	L&I Response
<p>We appreciate the intentional inclusion of language within the rule which clearly requires that any voluntary use of personal protective equipment (PPE) or devices must comply with established Department of Health or Division of Occupational Safety and Health (DOSH) standards and that its use cannot introduce safety or security standards to the workplace or violate applicable workplace rules.</p>	<p>Thank you for your comment.</p> <p>This comment did not result in a change to the adopted rule language.</p>
<p>We appreciate the allowance for an employer to verify that any voluntary PPE meets all regulatory requirements for workplace health and safety.</p>	<p>Thank you for your comment.</p> <p>This comment did not result in a change to the adopted rule language.</p>
<p>However, as written the rule includes no requirement for employees to notify the employer of the intent to initiate voluntary use of PPE. Advance notification would provide an opportunity for the employer to conduct such verification. Propose the following amendment: (3) An employee or contractor must provide notification of intent to use voluntary protective equipment two weeks prior to initiating use of PPE.</p>	<p>Thank you for your comment.</p> <p>This was intentional as DOSH did not want to add additional burden on employers to collect this information. Employers may include in their employment policies that employees should alert supervisors to the use of PPE, however this information cannot be used to prohibit that PPE unless it is creating a hazard, is inconsistent with the applicable DOSH rules, conflicts with standards for the equipment under DOSH or DOH rule, or with an employer's security requirements.</p> <p>This comment did not result in a change to the adopted rule language.</p>
<p>(4) Prior to the initiation of an employee's voluntary use of PPE an employer may verify that the voluntary use of the personal protective equipment meets all regulatory requirements for workplace health and safety, does not</p>	<p>Thank you for your comment.</p> <p>The proposed change is already addressed by the adopted language: "(1)(a) <i>The voluntary use of personal protective</i></p>

<p>introduce hazards to the work environment, and does not conflict with the employer’s existing rules or interfere with the employee’s ability to perform the duties of their job.</p>	<p><i>devices or equipment does not introduce hazards to the work environment and is consistent with applicable rules established by the department.”</i> The employer may have existing rules or policies regulating dress code for their industry. Dress code policies may not interfere with the ability for an employee to wear voluntary PPE under this rule but may address things like what can be displayed on voluntary PPE.</p> <p>This comment did not result in a change to the adopted rule language.</p>
<p>Additionally, the proposed language is unclear as to assignment of responsibility for any damage or injury due to the employee’s use of such PPE. Propose the following amendments: (5) Employers do not have to purchase, store, maintain, or otherwise provide protective devices or equipment for voluntary use by employees under this section. Employers shall not be responsible for any required inspection, replacement, or cleaning of any voluntary PPE, nor are they responsible for any damage caused to the PPE or theft of the PPE from company property. (6) RCW 49.17.485 precludes DOSH from issuing variances under RCW 49.17.080 related to voluntary personal protective devices and equipment during a public health emergency as defined in RCW 49.17.485.</p>	<p>Thank you for your comment.</p> <p>The employer may have existing rules or policies regarding personal property that is brought to the workplace that can address responsibility for damage or theft. Employers are not obligated to inspect or replace PPE employees chose to use under this rule. Employers may discuss an employee’s proper use of PPE in order to determine if the PPE creates a hazard is inconsistent with the applicable DOSH rules, conflicts with standards for the equipment under DOSH or DOH rule, or interferes with an employer’s security requirements.</p> <p>This comment did not result in a change to the adopted rule language.</p>
<p>The language for 296-307-10030 is confusing. It doesn’t make clear that the employer is still required to provide PPE when the regulations require PPE. It should be made clearer that this proposed language is only for those situations where employees don’t want to wear the PPE that the employer provided and instead, want to wear their own PPE. The language just talks around this and it could easily be misinterpreted.</p>	<p>Thank you for your comment.</p> <p>The adopted rule makes clear under subsection (1) that the rule only applies when an employer or contractor does not require PPE to be used by employees/workers based on required PPE hazard assessments or other DOSH standards. Subsection (1) of the adopted rule states: “(1) Every employer that does not require employees or contractors to wear a</p>

	<p><i>specific type of personal protective equipment as determined under the PPE hazard assessment.....must allow its employees or contractors voluntary use of PPE.”</i></p> <p>To ensure clarity, we added language to the rule that voluntary use of PPE under this rule does not apply to situations under existing PPE rules where an employer allows employee provided personal protective equipment to be used rather than the personal protective equipment the employer provides.</p>
<p>We’re concerned that the policy as written, one, doesn’t limit the scope of what an employee may think is PPE or may decide to wear, leaving a lot of leeway for misusing this, I guess - - this standard and, two, a problem in that there’s no requirement for the employee to notify the employer that they are wearing any voluntary PPE that they think they might need.</p> <p>For example, under (1) in the voluntary use standard it talks about employees can wear things such as gloves, rubber slickers, disposable coveralls. So there is a concern that the employee maybe decide that they need to wear a rubber slicker or Tyvek suit because they are afraid of some sort of disease that may be out there that they feel they could get through skin contact.</p> <p>They wear this, and the employer isn’t aware of that. And now you have a day that’s over 52 degrees Fahrenheit, and suddenly that employee would fall under the heat rule for being exposed, and the employer would have no idea that this is taking place.</p>	<p>Thank you for your comment.</p> <p>The adopted rule does allow employers to discuss with employees appropriate PPE for the tasks they may perform. Per the adopted language “(2) <i>An employer may verify that voluntary use of personal protective equipment meets all regulatory requirements for workplace health and safety.</i>” Employers are not obligated to determine if the PPE employees chose to use under this rule is appropriate, needs to be inspected or replaced. Employers may discuss an employee’s proper use of PPE in order to determine if the PPE creates a hazard, is inconsistent with the applicable DOSH rules, conflicts with standards for the equipment under DOSH or DOH rule, or interferes with an employer’s security requirements. However, the employer does have an obligation to show why they are denying the use of PPE under safety or security concerns.</p> <p>Furthermore, we did not put a requirement in the rule around employer notification. This was intentional as DOSH did not want to add additional burden on employers to collect this information.</p>

	<p>This comment did not result in a change to the adopted rule language.</p>
<p>Also, we have employers who – or employees who check meters. They may feel that pepper spray is voluntary PPE to them. But it’s something that we maybe wouldn’t want them to have. We wouldn’t necessarily know that they had it since they were out working on their own in - - out with the citizens. And so, that – not knowing this, that could make the employer - - the employee themselves subject to problems and also could cause problems for the employer as fa as on a legal basis simply because we didn’t know this.</p>	<p>Thank you for your comment.</p> <p>Pepper spray is not considered personal protective equipment by DOSH.</p> <p>This comment did not result in a change to the adopted rule language.</p>
<p>So, in part 3 of this it says that the employer may verify the voluntary use of personal protective equipment meets all regulatory requirements for health and safety. But for many of these things that the employee may chose to wear, there may be no requirements for this that we – no regular – regulatory requirements because it’s something that they’ve chosen and it doesn’t - - there’s no regulatory requirements for the type of thing that they are wearing. So the fact that the employer doesn’t know what the employee may be wearing that could actually introduce hazards could make the employer vulnerable.</p>	<p>Thank you for your comment.</p> <p>The employer has the right to verify the voluntary use of personal protective equipment meets all regulatory requirements for safety and health. Employers may discuss an employee’s proper selection and use of PPE in order to determine if the PPE creates a hazard, is inconsistent with the applicable DOSH rules, conflicts with standards for the equipment under DOSH or DOH rule, or interferes with an employer’s security requirements.</p> <p>This comment did not result in a change to the adopted rule language.</p>