



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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FILED

DATE: March 05, 2024

TIME: 8:52 AM

WSR 24-06-069

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

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 23-07-139 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Voluntary use of personal protective equipment. 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; and Chapter 296-800 WAC, Safety and health core rules: WAC 296-800-16080.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
April 23, 2024	1:30 p.m.	Enduris Training Center 1610 S Technology Blvd. Suite 100 Spokane WA 99224	A pre-hearing overview will begin at 1:00 p.m. The hearing will start at 1:30 p.m. and will continue until all oral comments are received.
April 30, 2024	10:30 a.m.	Dept. of Labor & Industries 12806 Gateway Drive S Tukwila WA 98168	A pre-hearing overview will begin at 10:00 a.m. The hearing will start at 10:30 a.m. and will continue until all oral comments are received.
May 2, 2024	10:30 a.m.	Virtual and telephonic hearing To join electronically: https://lni-wa.gov.zoom.us/j/81062827834?pwd=cmh1d3pZNXFtaDRySGxIS0RUUm9kUT09 Passcode (if prompted): VPpe@10a To join by phone (audio only): 253-215-8782 Meeting ID: 810 6282 7834 Passcode: 00284359	A pre-hearing overview will begin at 10:00 a.m. The hearing will start at 10:30 a.m. and will continue until all oral comments are received.

Date of intended adoption: June 4, 2024 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Carmyn Shute, Administrative Regulations Analyst

Address: Department of Labor & Industries
Division of Occupational Safety and Health
PO Box 44620
Olympia WA 98504-4620

Email: Carmyn.Shute@lni.wa.gov

Fax: 360-902-5619

Other:

By (date) 5:00 p.m. May 17, 2024

Assistance for persons with disabilities:

Contact Carmyn Shute, Administrative Regulations Analyst

Phone: 360-870-4525

Fax: 360-902-5619

TTY:

Email: Carmyn.Shute@lni.wa.gov

Other:

By (date) 5:00 p.m. April 15, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Department of Labor and Industries (L&I) is proposing permanent sections in rule 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 any PPE, including facial coverings, must not interfere with an employer's security requirements.

The proposed sections in rule model RCW 49.17.485, Personal protective devices and equipment – Public health emergency, but is not limited to declared public health emergencies. In the event a public health emergency is declared, the proposed sections in rule would already be effective and no material change would be needed to comply with RCW 49.17.485.

Reasons supporting proposal: Allowing workers to voluntarily use appropriate and safe personal protective equipment when it is not otherwise required for the job is essential for the preservation of worker health and safety. During the COVID-19 pandemic, when a mask mandate was not in place, workers in multiple industries continued to wear masks as a means of protection and to reduce transmission of infectious or contagious disease.

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

Statute being implemented: Chapter 49.17 RCW

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: No additional comments.

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) Department of Labor & Industries

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Tracy West	Tumwater, WA	509-237-2372
Implementation:	Craig Blackwood	Tumwater, WA	360-902-5828
Enforcement:	Craig Blackwood	Tumwater, WA	360-902-5828

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Carmyn Shute, Administrative Regulations Analyst

Address: Department of Labor & Industries
Division of Occupational Safety and Health
PO Box 44620
Olympia WA 98504-4620

Phone: 360-870-4525

Fax: 360-902-5619

TTY:

Email: Carmyn.Shute@Lni.wa.gov

Other:

No: Please explain:

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of 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. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW .

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. The proposed sections in rule only require an employer to allow their employees to use PPE. There is no cost to the employer, as they do not need to supply or maintain the PPE.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:


Fax:

TTY:

Email:

Other:

Date: March 5, 2024
Name: Joel Sacks
Title: Director

Signature: 
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