



Final Cost-Benefit Analysis

Voluntary Personal Protective Equipment

WAC 296-155-249

WAC 296-307-10030

WAC 296-800-16080

July 2024

I. Introduction

Administrative Procedure Act Requirements

The Administrative Procedure Act (APA) requires that, before adopting a significant legislative rule, the Department of Labor & Industries (L&I) must analyze the probable costs and benefits of the rule, and determine that the benefits are greater than its costs, taking into account both the qualitative and quantitative benefits and costs.” [RCW 34.05.328(1)(d)]

RCW 34.05.328(5)(c)(iii) defines a "significant legislative rule" as a rule, other than a procedural or interpretive rule, that:

- Adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction;
- Establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or
- Adopts a new, or makes significant amendments to, a policy or regulatory program.

Under certain circumstances, a rule or rule component is exempt from this requirement.

Adopted New Sections in Rules

L&I adopted new sections in the following rule chapters to allow for the voluntary use of personal protective equipment (PPE).

- Chapter 296-155 WAC, Safety standards for construction work
- Chapter 296-307 WAC, Safety standards for agriculture
- Chapter 296-800 WAC, Safety and health core rules

Allowing workers to voluntarily use appropriate and safe PPE 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 reduce transmission of COVID-19.

The adopted sections address:

Voluntary use of PPE when workers feel the need to protect themselves from noise, dust, or possible infectious or contagious diseases.

- The use of PPE must not introduce a hazards into the workplace and is consistent with applicable DOSH rules;
- Voluntary PPE must also not interfere with employer’s security requirements;

- The voluntary use of PPE equipment does not conflict with standards for that specific type of equipment established by the department of health or DOSH; and
- Variances from the rule are not permitted when a public health emergency is in place according to RCW 49.17.485.

II. Probable Costs and Benefits of the Adopted Rule Sections

The adopted rule sections are significant legislative rules as they “adopt a new, or make significant amendments to, a policy or regulatory program”. The adopted rule sections do not set requirements that subject a violator to a penalty or sanction unless there is a repeat violation, nor do they establish, alter or revoke any qualification or standard for the issuance, suspension, or revocation of a license or permit.

The standards established in the adopted rule sections only require an employer to allow the voluntary use of PPE when the employee deems it necessary to protect from noise, dust, or possible infectious or contagious diseases. The employer has no cost of compliance with the rule sections because the employee must provide the PPE they are voluntarily using.

The benefits of the adopted rule sections include the benefits that employees will be able to protect themselves in the workplace from potential exposures that may not rise to the level of employer responsibility and will empower employees to make personal decisions based on their individual health status without the obligation of sharing this information with their employer.

III. Cost-Benefit Determination

As described above, the adopted rule sections only require an employer to allow the use of PPE by their employees, so there is no cost to the employer since they do not need to supply the PPE. In total, the probable benefits of these rule sections are likely much greater than the probable costs.