



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 05, 2023

TIME: 8:33 AM

WSR 23-18-077

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

Title of rule and other identifying information: (describe subject) Chapter 296-62 WAC General Occupational Health Standards, Part R-1 – Surgical Smoke; WAC 296-62-510 Surgical smoke, WAC 296-62-51010 Scope and application, WAC 296-62-51020 Definitions, WAC 296-62-51030 Surgical smoke program, WAC 296-62-51040 Surgical smoke evacuation systems, WAC 296-62-51060 Effective dates, and WAC 296-62-51070 Appendix A

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this proposal is to add a new part (R-1 – Surgical Smoke) to Chapter 296-62 WAC General Occupational Health Standards. The new part is necessary for L&I to implement and enforce Substitute House Bill 1779 (SHB 1779), passed by the Washington State legislature in 2022 (codified as RCW 49.17.500), which becomes effective January 1, 2024. SHB 1779 requires employers in hospitals and ambulatory surgical centers to adopt and adhere to policies covering the use of smoke evacuation systems to protect workers who may be exposed to surgical smoke.

The proposed rule adopts language from RCW 49.17.500 and provides clarity regarding which employers are covered under the scope. RCW 49.17.500 states the law does not apply to hospitals with fewer than 25 acute care beds in operation. L&I interprets “in operation” as “licensed” beds to make sure the rule applies to the correct facilities.

Reasons supporting proposal: Surgical smoke is a mixture of particulates, vapors, and gases released by energy generating medical devices. Devices utilize lasers, electricity, heat, or plasma to cut, remove, or adhere body tissues. Smoke is irritating and may include toxic or infectious components. Evacuation systems utilize a suction system, which may be incorporated into the surgical tool, to capture the smoke and filter or exhaust it away from workers and patients.

The rulemaking is needed to ensure hospitals and ambulatory surgical centers understand what requirements they must meet in regard to employee exposure to surgical smoke. The rulemaking is also needed for L&I to implement and enforce the requirements established by RCW 49.17.500.

Statutory authority for adoption: RCW 49.17.500

Statute being implemented: RCW 49.17.500

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

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

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Tracy West	Tumwater, WA	360-902-6954
Implementation:	Craig Blackwood	Tumwater, WA	360-902-5828

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

☐ Relates only to internal governmental operations that are not subject to violation by a person;

☒ Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

☐ Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

☐ Content is explicitly and specifically dictated by statute;

☐ Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or

☐ Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

☐ The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;

☐ The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;

☐ The rule is no longer necessary because of changed circumstances; or

☐ Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.


Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): The new rule language being proposed under Chapter 296-62 WAC adopts without material change the workplace safety and health requirements described under RCW 49.17.500.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

Name: AJ Wagner
Agency: Department of Labor and Industries
Division of Occupational Safety and Health (DOSH)
Address: PO Box 44620
Olympia, WA 98504
Phone: 360-515-6220
Fax: 360-902-5619
Email: Arthur.Wagner@Lni.wa.gov
Other:

AND RECEIVED BY (date) November 6, 2023

Date: September 5, 2023	Signature: 
Name: Joel Sacks	
Title: Director	