



PROPOSED RULE MAKING

CR-102 (June 2024)
(Implements RCW 34.05.320)
Do NOT use for expedited rule making

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FILED

DATE: October 17, 2024
TIME: 8:43 AM

WSR 24-21-090

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

Original Notice
 Supplemental Notice to WSR _____
 Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR _____ ; or
 Expedited Rule Making--Proposed notice was filed as WSR 24-11-143; 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) Wildfire Smoke. Chapter 296-820 WAC and chapter 296-307 WAC, Part G-1.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
December 4, 2024	11:00 a.m.	Virtual and telephonic hearing To join electronically: https://lni-wa-gov.zoom.us/j/81996990236?pwd=uA7VoXaaTEJfbh8q94ltcMgTtVefHD.1 To join by phone (audio only): Call In: 253-205-0468 or 253-215-8782 Hearing ID: 819 9699 0236 Passcode: 1280939316	A pre-hearing overview will begin at 10:30 a.m. The hearing will start at 11:00 a.m. and will continue until all oral comments are received.

Date of intended adoption: February 4, 2025 (Note: This is **NOT** the **effective** date)

Submit written comments to:	Assistance for persons with disabilities:
Name Cynthia Ireland, Administrative Regulations Analyst Address Department of Labor & Industries Division of Occupational Safety and Health PO Box 44620 Olympia, WA 98504-4620 Email Cynthia.Ireland@lni.wa.gov Fax 360-902-5619 Other Beginning (date and time) <u>October 18, 2024 at 8:00 a.m.</u> By (date and time) <u>December 11, 2024, 5:00 p.m.</u>	Contact Cynthia Ireland Phone 360-791-5048 Fax 360-902-5619 TTY Email Cynthia.Ireland@lni.w.a.gov Other By (date) <u>November 20, 2024</u>

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
The proposed language was originally filed as a CR-105, WSR 24-11-143. L&I received a timely objection to that expedited rulemaking filing requiring L&I to file a CR-102 and engage in the standard rulemaking process under the Administrative Procedures Act.

This proposed rulemaking is to update the Air Quality Index (AQI) values referenced in the wildfire smoke rules to reflect changes the Environmental Protection Agency (EPA) made to the AQI that became effective on May 6, 2024. Employers are allowed to use the approximate corresponding AQI values for the ease of compliance with the requirements in the rules; this ensures that the regulated community will be able to comply with the rule requirements when using data sources that do not display the hourly PM_{2.5} concentrations.

In 2023, L&I completed rulemaking on the hazards of wildfire smoke exposure to outdoor workers. The primary pollutant in wildfire smoke is harmful fine particles, referred to as PM_{2.5}. The wildfire smoke rules require employers to implement protective measures based on the current concentration of PM_{2.5} measured in micrograms per cubic meter (µg/m³). The AQI is a unitless index created by the EPA to communicate air quality conditions to the public. While the rules are based on hourly average PM_{2.5} concentrations, they reference the corresponding AQI for workers and employers who choose to use the AQI to determine the amount of smoke in the air.

PROPOSED CHANGES:

- Update references to the AQI values throughout chapter 296-820 WAC and WAC 296-307-09805 through 296-307-09860 to align with recent EPA updates. This includes adding AQI values to a level previously considered “Beyond the AQI” by the EPA.
- Add language identifying a new PM_{2.5} web application developed by L&I as an approved source for identifying current PM_{2.5} concentration.
- Makes housekeeping changes and minor updates to the appendices found in both chapters to reflect EPA revisions including updating the equation for calculating the AQI (non-mandatory).

This proposed rulemaking updates the references to the corresponding AQI based on the EPA’s recent revisions to the AQI which were published in the Federal Register on March 6, 2024, and went into effect on May 6, 2024, adds an option for checking PM_{2.5}, and makes other housekeeping changes to align with the EPA changes.

Reasons supporting proposal: During the course of the multi-year rulemaking project, completed in 2023, L&I became aware that the EPA was working to update the AQI breakpoints, which would change the AQI values referenced in the wildfire smoke rules. Throughout stakeholdering, L&I communicated that if the EPA made updates to the AQI, L&I would update the wildfire smoke rules to ensure the regulated community has accurate information. This proposed rulemaking updates L&I’s current wildfire smoke rule to correctly reflect the recent revisions to the AQI.

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? | <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:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

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

Type of proponent: Private. Public. Governmental.

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

Address
Phone
Fax
TTY
Email
Other

No: Please explain: This proposed rulemaking is exempt from preparing a cost-benefit analysis under RCW 34.05.328(5)(b)(iii) because the rulemaking is proposing to adopt language without material change based on federal regulations, or, as referenced by Washington state law, national consensus codes that generally establish industry standards. The proposed rule also corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

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:

[RCW 34.05.310](#) (4)(b)
(Internal government operations)

[RCW 34.05.310](#) (4)(e)
(Dictated by statute)

[RCW 34.05.310](#) (4)(c)
(Incorporation by reference)

[RCW 34.05.310](#) (4)(f)
(Set or adjust fees)

[RCW 34.05.310](#) (4)(d)
(Correct or clarify language)

[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. _____

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: October 17, 2024

Name: Joel Sacks

Title: Director

Signature:

