



EXPEDITED RULE MAKING

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

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FILED

DATE: May 21, 2024

TIME: 4:37 PM

WSR 24-11-143

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

Title of rule and other identifying information: (describe subject)
Wildfire Smoke. Chapter 296-820 WAC and chapter 296-307 WAC, Part G-1.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Labor & Industries (L&I) is conducting expedited rulemaking to update the Air Quality Index (AQI) values referenced in the wildfire smoke rules to reflect changes the Environmental Protection Agency (EPA) to the AQI that became effective on May 6, 2024. 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" as 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).

L&I determined that expedited rulemaking is appropriate because there are no changes to the substantive rule requirements, including the levels of smoke and particulate matter in the air that require action under the rules. The 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, 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:			
Name of proponent: (person or organization) Department of Labor & Industries		<input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> 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
Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: No additional comments			
Expedited Adoption - Which of the following criteria was used by the agency to file this notice:			
<input type="checkbox"/> Relates only to internal governmental operations that are not subject to violation by a person; <input checked="" type="checkbox"/> 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; <input checked="" type="checkbox"/> Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect; <input type="checkbox"/> Content is explicitly and specifically dictated by statute; <input type="checkbox"/> 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 <input type="checkbox"/> 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:			
<input type="checkbox"/> 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; <input type="checkbox"/> 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; <input type="checkbox"/> The rule is no longer necessary because of changed circumstances; or <input type="checkbox"/> 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): This rulemaking is limited to implementing changes made in federal law.			

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

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Other:

AND RECEIVED BY (date) July 22, 2024, by 5:00 p.m.

Date: May 21, 2024	Signature: 
Name: Joel Sacks	
Title: Director	