



# RULE-MAKING ORDER EMERGENCY RULE ONLY

## CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: June 01, 2022

TIME: 11:05 AM

WSR 22-12-094

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

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.
- Later (specify) June 15, 2022

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes
  - No
- If Yes, explain:

**Purpose:** The Department of Labor & Industries (L&I) is adopting a second set of emergency rules regarding wildfire smoke under chapter 296-62 WAC, General Occupational Health Standards. L&I filed the initial emergency rules on July 16, 2021, WSR 21-15-067. These rules expired on November 13, 2021. L&I recognizes the hazard of wildfire smoke exposure is increasing every year and potentially presents serious health risks to all workers, especially those working outside in industries such as construction and agriculture. L&I has received a petition for rulemaking regarding wildfire smoke protections after the historic 2020 wildfires, which created unprecedented smoke conditions in the state.

A major component of wildfire smoke is particulate matter with an aerodynamic diameter less than 2.5 micrometers (PM<sub>2.5</sub>); inhalation of PM<sub>2.5</sub> can cause cardiovascular health effects and increases the risk of death. PM<sub>2.5</sub> is elevated during wildfire smoke events, causing a risk to workers.

Except as described below, this emergency rule continues the requirements under the previous emergency rules, including:

- Requirements for employers to determine PM<sub>2.5</sub> levels at their worksites by checking one of the listed web-based sources or directly measuring PM<sub>2.5</sub> at their worksite.
- Requirements for training both supervisors and line staff who may be exposed to PM<sub>2.5</sub> levels of 20.5µg/m<sup>3</sup> (AQI 69) or above on the hazards of wildfire smoke and the procedures regarding the employer’s plan for ensuring workers are protected from wildfire smoke.
- Requirements for monitoring and allowing for medical care for employees who display symptoms of illness related to wildfire smoke.

Changes to this emergency rule include:

- Requirements for hazard communication to notify employees when:
  - At least two consecutive PM<sub>2.5</sub> readings are 20.5 µg/m<sup>3</sup> (AQI 69) or more
  - The PM<sub>2.5</sub> is 35.5 µg/m<sup>3</sup> (AQI 101) or more
  - The PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> (AQI 301) or more
  - The PM<sub>2.5</sub> is 555 µg/m<sup>3</sup> (beyond the AQI) or more
- Requirements for implementation of engineering and administrative controls whenever PM<sub>2.5</sub> reaches 35.5 µg/m<sup>3</sup> (AQI 101) and such controls are feasible.
- Requirements for supplying respiratory protection for employees use on a voluntary basis whenever PM<sub>2.5</sub> reaches 35.5 µg/m<sup>3</sup> (AQI 101).
- Where the PM<sub>2.5</sub> is 555 µg/m<sup>3</sup> or more, employees must be enrolled in a complete respiratory protection program in accordance with chapter 296-842 WAC. At this level, employees must be provided one of the following types of respiratory protection: a loose-fitting powered air purifying respirator (PAPR), full-facepiece PAPR, full-facepiece air purifying respirator, or another respirator that is at least as effective.

The emergency rule ensures that workers in Washington are provided protections from the hazard of wildfire smoke inhalation while L&I proceeds with the implementation of the wildfire smoke permanent rulemaking.

In addition, L&I filed a Preproposal Statement of Inquiry (CR-101) on October 20, 2021, under WSR 20-21-093, regarding permanent rulemaking for hazards relating to wildfire smoke events. Some additions made as part of the emergency rule will be considered for permanent rulemaking. L&I will be seeking comments from affected stakeholders during the permanent rulemaking process.

**Citation of rules affected by this order:**

New: WAC 296-62-085, 296-62-08510, 296-62-08520, 296-62-08530, 296-62-08540, 296-62-08550, 296-62-08560, 296-62-08570, 296-62-08580, 296-62-08585, and 296-62-08590.

Repealed:

Amended:

Suspended:

**Statutory authority for adoption:** RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060 and 49.17.240

**Other authority:**

**EMERGENCY RULE**

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

**Reasons for this finding:** Wildfire smoke is composed of harmful chemicals and tiny particles suspended in the air that present a significant health hazard for workers exposed to it. These particles can irritate the lungs and cause serious or even fatal health effects, such as reduced lung function, bronchitis, worsening of asthma, and heart failure. Compared with the general public, workers have additional risk factors in that they may spend more time outdoors in the smoke, and have more physical exertion, which increases the amount of smoke that they breathe into their lungs. Individuals considered sensitive to wildfire smoke exposure, such as those with asthma and those who work outdoors, are part of the workforce.

The US Environmental Protection Agency's (EPA) Air Quality Index (AQI) is an informational tool for reporting air quality and is based, in part, on particulate matter (PM<sub>2.5</sub>) measurements. Under the Clean Air Act, the EPA sets and reviews national air quality standards for several air pollutants, including PM<sub>2.5</sub>. AQI is a level of 1 to 500 divided into six color-coded categories that correspond to different levels of health concerns (good, moderate, unhealthy for sensitive groups, unhealthy, very unhealthy, and hazardous). The EPA categorizes the AQI level of 101 as "unhealthy for sensitive groups" and corresponds to PM<sub>2.5</sub> concentrations of 35.5 µg/m<sup>3</sup>.

California and Oregon are currently the only other states with rules for occupational exposure to wildfire smoke. California's rule requires employers take preventative measures at a PM<sub>2.5</sub> of 55.5 µg/m<sup>3</sup> (AQI 151), and Oregon requires preventative measures at a PM<sub>2.5</sub> of 35.5 µg/m<sup>3</sup> (AQI 101). California's rule requires employers to implement engineering and administrative controls and make respirators available for voluntary use at a PM<sub>2.5</sub> of 55.5 µg/m<sup>3</sup> (AQI 151). Mandatory respirator use is required when the PM<sub>2.5</sub> is 500.4 µg/m<sup>3</sup> (AQI 501) or greater with an assigned protection factor (APF) such that the PM<sub>2.5</sub> levels inside the respirator are less than 55.5 µg/m<sup>3</sup> which would require respirators that are more protective than N95s at 55.5 µg/m<sup>3</sup> (beyond the AQI). When respirators are required, compliance with California's respiratory program rules, including fit testing and medical evaluations, are also required. Oregon's rule requires employers to implement engineering and administrative controls and make respirators available for voluntary use at a PM<sub>2.5</sub> of 35.5 µg/m<sup>3</sup> (AQI 101). Oregon's rule also requires N95 use at 200.9 µg/m<sup>3</sup> (AQI 251) without fit-testing or medical evaluations, and when the PM<sub>2.5</sub> is 500.4 µg/m<sup>3</sup> (AQI 501) or greater, a full respiratory protection program is required, including fit testing and medical evaluations.

For the past several summers, L&I's Division of Occupational Safety and Health (DOSH) received inquiries about wildfire smoke hazards, especially for outdoor workers. DOSH has put out guidance and information on best practices but recognizes there has been a gap under previous rules to adequately protect workers from this hazard and to ensure employers and workers understand what is required. After the unprecedented wildfire smoke events in 2020, L&I reviewed the need for rules and received a petition requesting rulemaking. L&I determined that rulemaking was needed to address the hazard and initiated permanent rulemaking on October 20, 2020, WSR 20-21-093. L&I held five virtual stakeholder meetings from January 2021-June 2021 to discuss development of a permanent rule and emergency rules. L&I filed the initial emergency rules on July 16, 2021, WSR 21-15-067. These rules expired on November 13, 2021.

Additionally, L&I held two virtual stakeholder meetings from January 2022-April 2022 to discuss the second set of emergency rules and to gather feedback on the draft permanent rule.

Immediate adoption of a rule is necessary for the preservation of worker health and safety and it would be contrary to the public interest to wait until a permanent rule can be adopted. The fire season is imminent and existing regulations are not sufficient to protect workers from the dangers of wildfire smoke. Wildfire smoke can travel hundreds to thousands of miles and wildfires in other states and in Canada can cause hazardous air quality levels in Washington. While L&I provided draft emergency rules for stakeholder input, the emergency process does not allow for the opportunity for notice and comment that are part of the permanent rulemaking process. Therefore, L&I is taking emergency action to avert the development of wildfire smoke-related illnesses among Washington's workforce and ensure employers can train employees, plan for their response, and obtain the necessary respirators for employee voluntary use when wildfire events do happen.

Consistent with the mandate under the Washington Industrial Safety and Health Act (WISHA), L&I has looked at the best available evidence and determined that there are feasible measures to address the health hazards wildfire smoke presents for workers. The emergency rule requires employers to implement engineering and administrative controls and make respirators available for voluntary use at a PM<sub>2.5</sub> concentration of 35.5 µg/m<sup>3</sup> (AQI 101 which is unhealthy under the AQI level) but encourages employers to take these actions at a PM<sub>2.5</sub> concentration of 20.5 (AQI 69 which is unhealthy for sensitive groups). Under this approach, enforcement levels are set at the same as Oregon, which has been a feasible approach. Additionally, at 555 µg/m<sup>3</sup> (beyond the AQI), use of more protective respirators is required such as loose-fitting powered air purifying respirators (PAPR), full facepiece respirators, or tight-fitting PAPR. The permanent rule process will continue to examine the hazards of PM<sub>2.5</sub> exposure levels and appropriate protections necessary.

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

**The number of sections adopted at the request of a nongovernmental entity:**

New	<u>11</u>	Amended	___	Repealed	___
-----	-----------	---------	-----	----------	-----

**The number of sections adopted on the agency's own initiative:**

New	<u>11</u>	Amended	___	Repealed	___
-----	-----------	---------	-----	----------	-----

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

**The number of sections adopted using:**

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	<u>11</u>	Amended	___	Repealed	___

**Date Adopted:** June 1, 2022

**Name:** Joel Sacks

**Title:** Director

**Signature:**

