



August 4, 2023

Cynthia Ireland
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RE: Comments on Proposed Wildfire Smoke Rules

Dear Ms. Ireland:

Thank you for the opportunity to comment on these proposed wildfire smoke rules.

Wafla is a non-profit 501(c)(6) membership organization comprised of nearly 800 agricultural and seasonal employers. We offer ways for our members to access several federal visa programs and receive assistance complying with state and federal labor standards. Most workers on our members' worksites are involved in agriculture and other outdoor work.

We are fully in support of reasonable workplace safety standards. Our association routinely recommends that our members participate in the safety consultation program at L&I, receive safety advice from Washington Farm Bureau and other private industry consultants, and send their workers to Ag Safety Day. We are committed to workers remaining safe at work, and we generally prefer collaborative safety proposals by employers and employees over government-mandated rules.

We have concerns with the style in which these proposed rules are written. They seem jumbled. For years, L&I has sought to ensure that rules be written or rewritten in ways that employers and workers can understand. L&I has reformatted safety rules to allow them to be easily accessed via mobile phones and searched on a new website. This proposal does not meet those readability standards. A person should not have to be a safety expert or industrial hygienist to understand these rules. As such, the main thrust of our comments pertains to the order, flow, style, grammar, structure, and communication of the proposed rules to make their substance more understandable.

We respectfully request consideration of the comments below.

General observations and comments

- **Simultaneous comments:** Since this rule proposal contains sections for agriculture (WAC 296-307) and non-agricultural employers (WAC 296-820) which are substantially similar, we will comment on them simultaneously. For each reference to the WACs, we will cite chapter 307 first, followed by chapter 820.

- **Grammar:** Many times in these proposed rules, references to a specific WAC are followed by the title of that WAC within the text of a paragraph (e.g., “...as identified in WAC 296-307-09815 Identification of harmful exposures...”). Sometimes that title is not set off in commas, and sometimes a comma follows that title. For example, WAC 296-307-09840(7) states, “The employer must use WAC 296-307-09825 Information and training in lieu of the advisory information in Table 2 of WAC 296-307-59805 Respirators, for training regarding voluntary use of respirators for wildfire smoke.” There are no commas before and/or after “Information and training,” but there is one following “Respirators.” Other instances of this lack of consistency abound throughout the proposed rules.

For the sake of brevity, we are not going to list every instance in our comments. We suggest that L&I be consistent throughout this proposal and ensure that grammatical constructions used in this proposal be consistent with other DOSH rules. The most common construction we have seen in other DOSH rules is to not include the title after the WAC number. We suggest that you eliminate these titles. As such, the example above would read as follows: “The employer must use WAC 296-307-09825 in lieu of the advisory information in Table 2 of WAC 296-307-59805 for training regarding voluntary use of respirators for wildfire smoke.” Deleting this extra information consistently throughout these rules would help readability without compromising the substance or understanding of the information.

- **Consistency of standards:** The substantive standards contained in Appendix A, which is mandatory for someone, are inconsistent with the rules in WAC 296-307-09815 through 296-307-09845. The reader will most likely read the rules, arrive at the appendices, and discover that additional requirements may be necessary. According to proposed WAC 296-307-09825, some minimum standards from Appendix A must be included in training provided to workers. But is all of Appendix A mandatory for employers? Is only some mandatory for workers? Or is all mandatory for everyone? The mandatory/nonmandatory nature of all three appendices is not explained clearly. To whom are they mandatory – employers or workers? Are they intended as handouts to workers? Why would nonmandatory information be included in the rules? The audience of Appendix A is not clear. It is mostly – but not entirely – written as if it should be a handout to workers. If that is true, it is not explained anywhere. We recommend that L&I state clearly what all the requirements are in the rules upfront. If an appendix is needed or wanted, its purpose should be clearly stated, and it should not include additional surprise requirements in it.
- **Follow-up training materials:** Because these rules are dense on substantive, technical matters, we suggest that L&I quickly develop a guide to put these rules, once they are adopted, into plain language—including charts or other visual guides—for employers and employees.
- **Structure:** The proposed rules set forth definitions, give some basic information about the rules, discuss what employers should say to employees, then delve into the technical aspects of the rules, and finally offer appendices that may or may not be mandatory. Sometimes the sections earlier in the rules presuppose knowledge of what comes later in the rules.

We suggest an alternate flow to these proposed rules. Definitions should come first, followed by the substance and explanation of the rules, and finally the provisions dealing with communication and training of workers. We believe this order flows more sequentially and

clearly for both the casual and expert reader. Our suggested order would move two appendices into the body of the rules. The following is the order we suggest:

- 296-307-098/296-820 Wildfire smoke
- 296-307-09805/296-820-805 Purpose and scope
- 296-307-09810/296-820-810 Definitions
- 296-307-09860/296-307-860 ~~Appendix C: Calculating the Air Quality Index for PM2.5 (nonmandatory)~~
- 296-307-09815/296-820-815 Identification of harmful exposures
- 296-307-09845/296-820-845 Measuring PM2.5 levels at the worksite
- 296-307-09855/296-820-855 ~~Appendix B: Selecting direct-reading particulate monitors (mandatory)~~
- 296-307-09830/296-820-830 Exposure symptom response
- 296-307-09835/296-820-835 Exposure controls
- 296-307-09840/296-820-840 Respiratory protection
- 296-307-09820/296-820-820 Hazard communication
- 296-307-09825/296-820-825 Information and training
- 296-307-09850/296-820-850 Appendix A: Protection from wildfire smoke information and training (mandatory)

While it may be confusing, we are going to comment on the rules in the order listed above in an attempt to demonstrate our rationale for suggesting this change.

WAC 296-307-098/296-820 Wildfire smoke

No comments

WAC 296-307-09805/296-820-805 Purpose and scope

No comments

WAC 296-307-09810/296-820-810 Definitions

Subsection (4) – The semicolon following “operations” is confusing to the meaning of the definition. It is not needed and should be deleted. The other semicolons are grammatically acceptable, but they still make the definition hard to read. It would be best to rewrite this definition more clearly, possibly using subdivisions.

Subsection (7) – The comma following “(EPA)” is not necessary and should be deleted.

WAC 296-307-09860/296-820-860 ~~Appendix C: Calculating the Air Quality Index for PM2.5 (nonmandatory)~~

We believe this appendix, if it is going to be in these rules, should be placed immediately after the definitions because it describes the calculation for determining the Air Quality Index (AQI). Placing this information here provides knowledge of AQI standards before the reader begins to learn about how to identify harmful exposures using PM2.5 and AQI in proposed WAC 296-307-09815/296-820-815.

We suggest officially dropping “Appendix C” and “nonmandatory” from the title. This proposed WAC is merely informational. It could also be deleted from the rules because it is not truly necessary.

WAC 296-307-09815/296-820-815 Identification of harmful exposures

No comments

WAC 296-307-09845/296-820-845 Measuring PM2.5 levels at the worksite

Since proposed WAC 296-307-09815/296-820-815 refers to measuring PM2.5 at the worksite, this section of the proposed WACs should follow it directly. Taken together, the reader will know that PM2.5 needs to be determined and how to do that.

**WAC 296-307-09855/296-820-855 ~~Appendix B: Selecting direct-reading particulate monitors~~
(mandatory)**

This proposed section needs to be moved into proximity to proposed WAC 296-307-09845/296-820-845. It could directly follow WAC 296-307-09845 or be incorporated into WAC 296-307-09845/296-820-845. This change would place all of the mandatory standards regarding the measurement of PM2.5 levels together and would rename the title to remove “Appendix B” and “mandatory.” Without this change, the reader might think they have read all mandatory information about this subject only to be surprised that additional mandatory information is included as an appendix.

If L&I retains this section as an appendix, we suggest including a reference to this appendix in the text of proposed WAC 296-307-09845/296-820-845 so that the reader will know additional, necessary information on this topic is included at the end of the rules.

Subsection (3) – Delete “and” between “exposures” and “so long.” The “and” is not necessary.

WAC 296-307-09830/296-820-830 Exposure symptom response

Subsection (2) – Delete the comma between “treatment” and “and.” It is not necessary.

WAC 296-307-09835/296-820-835 Exposure controls

Subsection (3)(e) – Delete the comma between “Avoiding” and “or.” It is not necessary.

WAC 296-307-09840/296-820-840 Respiratory protection

We believe the PM2.5 thresholds and the corresponding employer-employee actions listed in this section are reasonable.

Subsection (2) – Delete the comma between “employees” and “and.” It is not necessary.

Subsection (2)(b) – Delete the comma between “known” and “and.” Delete the comma between “accessible” and “to.” They are not needed.

Subsection (3) – Delete the comma between “employee” and “and.” It is not necessary.

Subsection (4) – The words “of this chapter” do not seem necessary and could be removed.

Subsection (5) – The words “of this chapter” do not seem necessary and could be removed.

Subsection (8) – Delete the comma between “order” and “and.” Rephrase the sentence that reads: “Replace or repair any respirator that is not functioning properly, and do not permit their use.” This sentence, as written, instructs employers to prohibit the use of respirators that have been repaired or replaced. We suggest rewriting this sentence thus: “Do not permit the use of any respirator that is not

functioning properly. Repair or replace these respirators before they are used.” There are two instances of the words “filtering facepiece” in this subsection and two instances of those words in the notes to this section. Earlier in this section, “filtering-facepiece” is hyphenated. We suggest consistently hyphenating “filtering-facepiece” when it modifies “respirator.” Delete the comma after “Dispose” and insert the word “of,” so that the sentence reads: “Dispose of and replace any filtering-facepiece respirator that is dirty,…”

Notes, second bullet point – The words “of this chapter” (used twice) do not seem necessary and could be removed. We suggest moving the phrases that begin with “such as” closer to the nouns they modify. As such, this bullet point could be rewritten as follows: “For voluntary use of filtering-facepiece respirators, such as N95 respirators, some of the requirements of WAC 296-307-594 through 296-307-622, such as fit testing and medical evaluations, do not apply. Elastomeric respirators equipped with P100 filters may be used in place of N95 filtering-facepiece respirators. If elastomeric respirators are used voluntarily, additional requirements from WAC 296-307-594 through 296-307-622, such as medical evaluations and establishing a respiratory protection program, apply.”

Notes, third bullet point – The words “of this chapter” do not seem necessary and could be removed. We suggest moving the phrase that begins with “such as” closer to the nouns it modifies. As such, this bullet point could be rewritten as follows: “For voluntary or required use of loose-fitting powered air-purifying respirators, some of the requirements of WAC 296-307-594 through 296-307-622, such as fit testing and requiring workers to be clean shaven, do not apply.”

WAC 296-307-09820/296-820-820 Hazard communication

This proposed section is grammatically confusing and incorrect in several places. For example, subsections (1), (2), and (3) should be grammatically parallel to each other because they form a list that completes the thoughts of the main sentence, “The system shall include effective procedures for:” The first words of (1) and (2) are the gerunds “informing” and “enabling,” yet subsection (3) begins with “A wildfire smoke response plan must…” If subsection (3) is supposed to be included in this list, it also needs to begin with a gerund. If subsection (3) is not supposed to be included in this list, everything in this section needs to be renumbered to allow subsection (3) to stand on its own.

Subsection (1) – The comma after “thresholds” is unnecessary and should be deleted.

Subsection (3)(f) – The comma after “smoke” is unnecessary and should be deleted.

Subsection (3)(h) – We suggest moving “the risks of wearing a respirator without a medical evaluation” to its own subdivision (i) and then changing the current (i) to (j).

WAC 296-307-09825/296-820-825 Information and training

The timing of the training in the first paragraph of this new section is a bit confusing. Employers must provide employees with information and training regarding wildfire smoke “before work that exposes the worker to a PM2.5 concentration of [an AQI of 69] or more, and at least annually thereafter.” Does “before” mean immediately prior to starting work? Must this training occur each workday that has an AQI of 69 or more? Does annual training not start until after the first time AQI 69 and subsequent training is reached? If training is performed on an ongoing annual basis, must training also occur immediately prior to work in AQI 69 conditions? We suggest that L&I answer these questions by clarifying the language to require only annual training on wildfire smoke procedures. Doing so provides necessary education and avoids confusion about the timing of training.

Subsection (2)(e) – The word “employers” needs to be changed to “employer’s.”

Subsection (2)(f) – We suggest inserting a comma between “smoke” and “including” and deleting the comma between “smoke” and “and.” Doing so will clarify the meaning of the sentence.

Subsection (2)(h) – Delete the comma between “respirator” and “and.”

Subsection (3) – Delete the comma between “section” and “and.”

WAC 296-307-09850/296-820-850 Appendix A: Protection from wildfire smoke information and training (~~mandatory~~)

Please see our general comments above regarding the consistency of standards because they pertain to this appendix.

Subsection (1), paragraph that begins “Particulate matter” – We suggest changing the language to “particulate matter causes or likely causes cardiovascular....”

Subsection (1), paragraph that begins “It is especially” – Delete the unnecessary comma between “advice” and “or.”

Subsection (3), paragraph that begins “Employers must allow” – Change the comma after “seek medical treatment” to a period, delete “and,” and begin a new sentence with the words “Employers may...”.

Subsection (3), paragraph that begins “For more information” – Change “on” to “about” and “to file” to “filing.” This change ensures there is agreement between the preposition and the compound objects of that preposition. Change the semicolon after “complaint” to a comma.

Subsection (6) – Delete unnecessary comma after “plan” and insert “on” between “and” and “their procedures.”

Subsection (7)(a) – The words “filtering facepiece” are not hyphenated. Ensure the hyphenation is consistent with previous sections of these rules.

Subsection (7)(b), second paragraph – Place a period after “wildfire smoke exposure,” delete “and,” and begin a new sentence with “You.” If you make this change, you can change the semicolons to commas and make the sentence easier to read.

Subsection (7)(d) – The words “of this chapter” seem superfluous and could be deleted. Change “any” to “either,” since there are only two situations in the list that follows.

Subsection (8), second paragraph – Delete the unnecessary comma between “seal” and “and.”

Subsection (8), third paragraph – Delete the unnecessary comma between “asthma)” and “or.”

Subsection (8), fourth paragraph – Delete “And” and simply begin the sentence with “If.”

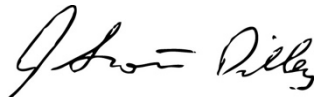
Subsection (9), first paragraph – The words “air purifying” should be hyphenated because they are a compound adjective. Ensure the hyphenation is consistent with previous sections of these rules.

Concluding remarks

Please get in touch with me if you have questions or need clarification about these comments.

Thank you for considering our perspective and comments on this rule proposal.

Sincerely,

A handwritten signature in black ink that reads "Scott Dilley". The signature is written in a cursive style with a large initial "S" and a stylized "D".

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