



RULE-MAKING ORDER

CR-103 (June 2004) (Implements RCW 34.05.360)

Agency: Department of Labor and Industries

- Permanent Rule
- Emergency Rule

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) May 1, 2005 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

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

- Yes
 - No
- If Yes, explain:

Purpose: Arsenic

The department has rewritten and clarified requirements relating to arsenic. Unnecessary requirements and outdated terminology have been eliminated. This rulemaking will adopt arsenic as a new chapter, chapter 296-848 WAC. This rulemaking is part of our goal to rewrite all of WISHA's general occupational safety and health rules for clarity.

Citation of existing rules affected by this order:

Repealed: WAC 296-62-07347.
 Amended: None.
 Suspended: None.

Statutory authority for adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060

Other authority : None.

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 04-18-077 on August 31, 2004.

Describe any changes other than editing from proposed to adopted version: See Attachment A.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: N/A

Name: _____ phone _____
 Address: _____ fax _____
 e-mail _____

EMERGENCY RULE ONLY

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:

Date adopted: December 21, 2004

NAME (TYPE OR PRINT)
Paul Trause

SIGNATURE

TITLE
Director

CODE REVISER USE ONLY

WSR#05-01-173

**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	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

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

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

	New	<u>20</u>	Amended	<u>0</u>	Repealed	<u>1</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>20</u>	Amended	<u>0</u>	Repealed	<u>1</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>20</u>	Amended	<u>0</u>	Repealed	<u>1</u>

Describe any changes other than editing from proposed to adopted version:

CHANGES TO THE RULES (Proposed rule versus rule actually adopted):

Chapter 296-848 WAC, Arsenic

WAC 296-848-100, Scope.

- Reformatted the bulleted list in the exemption.

WAC 296-848-20010, Preventive practices.

- Reformatted the bulleted in the reference.
- Moved the information from the requirement to “Select vacuums that have high efficiency particulate air (HEPA) filters” to the note below the requirement.

WAC 296-848-20060, Exposure evaluations.

- Added clarification with the phrase “another chapter” before the reference to Respiratory Hazards, chapter 296-841 WAC.
- In (2), the term “exposure measurement” has been changed to “exposure monitoring.”
- In the Exposure Evaluation Process, language was added to the “Important” statement to read, “Documentation can be based on quantitative information such as soil test results OR qualitative information such as observations of how inorganic arsenic-containing materials are handled.”
- In Step 2 of the Exposure Evaluation Process, the term “exposure measurement” has been changed to “exposure monitoring.”
- Clarified the language in the note under Step 2 of the Exposure Evaluation Process. It now reads, “A written description of the procedure used for obtaining representative employee exposure monitoring results needs to be kept as part of your exposure records required by this chapter in Exposure records, WAC 296-848-20090. This description can be created while completing Steps 2 through 4 of this exposure evaluation process.”
- In the first bullet in Step 3 of the Exposure Evaluation Process, the requirement has been changed to “Select and use a method that meets the following criteria for accuracy...” from “Get results from a method that meets the following criteria for accuracy...”
- Reformatted the bulleted list in the note under Step 3 of the Exposure Evaluation Process.
- In the first bullet of Step 4 of the Exposure Evaluation Process, the word “Collect” was changed to the word “Sample.”
- In the first bullet of Step 4 of the Exposure Evaluation Process, the word “sample” was changed to the word “shift.”
- Clarified the language in the note in Step 4 of the Exposure Evaluation Process to read, “The following are examples of methods for collecting samples representative of eight-hour exposures. Collect one or more continuous samples, for example, a single eight-hour sample or four two-hour samples. Take a minimum of 4 to 7 brief samples, such as fifteen-minute samples, during the work shift and at times selected randomly.

For work shifts longer than eight hours, monitor the continuous eight-hour portion of the shift expected to have the highest average exposure concentration.”

- In Step 5 of the Exposure Evaluation Process, the phrase “concentrations representative of” has been changed to “monitoring results representing.”

WAC 296-848-20070, Notification.

- In the first bullet, the word “concentrations” has been changed to “the monitoring results.”

WAC 296-848-20090, Exposure records.

- Clarified the first bullet to read, “Establish and keep complete and accurate records for all exposure monitoring conducted under this chapter.”
- Reformatted the bulleted list under the first requirement.
- Changed the language in the third sub-bullet to read, “A description of the procedure used to obtain representative employee exposure monitoring results.”
- Changed the language in the fourth sub-bullet to read, “The date, number, duration, location, and the result of each sample taken.”
- Corrected a bulleting error in the second primary bullet.
- Clarified the language in the second primary bullet to read, “Keep exposure monitoring records for at least thirty years.”
- Clarified the language in the reference to read, “To see additional requirements for employee exposure records including access and transfer requirements, go to another chapter, Employee medical and exposure records, chapter 296-802 WAC. Exposure monitoring records need to be kept longer than thirty years for employees participating in medical monitoring Go to Medical records, WAC 296-848-30080, found within this chapter.”

WAC 296-848-300, Training, exposure monitoring, and medical monitoring.

- Reformatted bulleted list.

WAC 296-848-30005, Training.

- In the fourth primary bullet, the reference in the second sub-bullet has been clarified by adding the phrase “another chapter.”
- Reformatted the bulleted in the reference.

WAC 296-848-30010, Periodic exposure evaluations.

- Added an exemption at the beginning of the section to read, “Periodic exposure evaluations aren’t required if exposure monitoring results conducted to fulfill requirements in Exposure Evaluation, WAC 296-848-20060, are below the Action Level (AL).”
- Clarified the language in the note to read, “If you document that one work shift consistently has higher exposure monitoring results than another for a particular operation, then you limit sample collection to the work shift with higher exposures and can use results to represent all employees performing the operation on other shifts.”
- Changed the term “concentrations” to “monitoring results” throughout Table 2, Periodic Exposure Evaluation Frequencies.

WAC 296-848-30030, Medical evaluations.

- Reformatted “Important” statement.”
- Clarified the reference by adding the phrase “another chapter.”
- Clarified the requirement in third primary bullet to read, “Make medical evaluations available by completing Steps 1 through 6 of the Medical Evaluation Process for each employee covered.”
- Moved note up before the Helpful Tool reference.
- Clarified the requirement to Step 6 to read, “Make sure the written opinion is limited to the information specified for written opinions in Step 4.”
- Corrected a typographical error by adding the word “opinion” in the note.

WAC 296-848-30080, Medical records.

- Reformatted “Important” statement.”

WAC 296-848-40045, Respirators.

- Reformatted “Important” statement.”
- Clarified the reference in the “Important” statement by adding the phrase “other chapters.”
- Added Respiratory Hazards, chapter 296-841 WAC, to the reference in the “Important” statement.
- Added the word “circumstances” to the first primary bullet.
- Changed the language in the third sub-bullet to read, “Where you determine that exposure controls are not feasible.”
- Changed the language in the third primary bullet to read, “Provide an employee a powered air-purifying respirator (PAPR) when this type of respirator will provide proper protection and: A licensed healthcare professional (LHCP) allows this type of respirator in their written opinion or the employee chooses to use this type of respirator. Prohibit the use of half-facepiece respirators for protection against arsenic trichloride.
- Added a note to read, “Arsenic trichloride is corrosive and can be rapidly absorbed through skin.”

WAC 296-848-500, Definitions.

- Clarified the definition of “Time-weighted average (TWA₈).” It now reads, “An exposure limit averaged over an eight-hour period that must not be exceeded during an employee’s workday.”