



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Labor and Industries

- Preproposal Statement of Inquiry was filed as WSR 07-01-101 ; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR 08-07-098

Title of rule and other identifying information: WAC 296-62-095, Heat-related illness in the outdoor environment

The purpose of this continuance filing is to extend the comment period for this proposed rulemaking from May 2 to May 9, 2008.

Hearing location(s): See WSR 08-07-098

Date: _____ Time: _____

Submit written comments to:

Name: Jamie Scibelli
Address: P.O. Box 44620
Olympia, WA 98504-4620
e-mail scij235@lni.wa.gov
fax (360) 902-5619 by May 9, 2008

Assistance for persons with disabilities: Contact
Beverly Clark by April 28, 2008
(360) 902-5516 or clah235@lni.wa.gov

Date of intended adoption: June 4, 2008

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: See WSR 08-07-098.

Reasons supporting proposal: See WSR 08-07-098.

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? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE
May 6, 2008

NAME
Judy Schurke

SIGNATURE

TITLE
Director

CODE REVISER USE ONLY

**OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED**

DATE: May 06, 2008

TIME: 2:37 PM

WSR 08-10-082

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: Department of Labor and Industries

- Private
- Public
- Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting	Tracy Spencer	Tumwater, Washington	(360) 902-5530
Implementation	Stephen M. Cant	Tumwater, Washington	(360) 902-5495
Enforcement	Stephen M. Cant	Tumwater, Washington	(360) 902-5495

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

See WSR 08-07-098 for a copy of the small business economic impact statement or a copy of the statement may be obtained by contacting:

Name: Jamie Scibelli
Address: P.O. Box 44620
Olympia, WA 98504-4620

phone (360) 902-4568
fax (360)902-5619
e-mail scij235@lni.wa.gov

No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Jamie Scibelli
Address: P.O. Box 44620
Olympia, WA 98504-4620

phone (360) 902-4568
fax (360)902-5619
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No: Please explain:



PROPOSED RULE MAKING

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 Expedited Rule Making--Proposed notice was filed as WSR _____; or
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- Original Notice**
 Supplemental Notice to WSR
 Continuance of WSR 08-07-098

Title of rule and other identifying information: WAC 296-62-095, Heat-related illness in the outdoor environment

The purpose of this continuance filing is to add an additional public hearing and additional time for persons needing any special assistance or accommodations. The additional hearing date, time, and location are as follows:

Date: May 2, 2008
Time: 2:00 p.m.
Location: Washington State Convention and Trade Center
Level 3 – South
Room 307-308
800 Convention Place
Seattle, WA 98101-2350

Hearing location(s): See attachment 1

Date: _____ Time: _____

Date of intended adoption: June 4, 2008
(Note: This is NOT the effective date)

Submit written comments to:

Name: Jamie Scibelli
Address: P.O. Box 44620
Olympia, WA 98504-4620
e-mail scij235@lni.wa.gov
fax (360) 902-5619 by May 2, 2008

Assistance for persons with disabilities: Contact

Beverly Clark by April 28, 2008
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Purpose of the proposal and its anticipated effects, including any changes in existing rules: See WSR 08-07-098.

Reasons supporting proposal: See WSR 08-07-098.

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? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No
If yes, CITATION:

CODE REVISER USE ONLY

**OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED**

DATE: April 24, 2008

TIME: 8:50 AM

WSR 08-10-006

DATE
April 24, 2008

NAME
Judy Schurke

SIGNATURE

TITLE
Director

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: Department of Labor and Industries

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting	Tracy Spencer	Tumwater, Washington	(360) 902-5530
Implementation	Stephen M. Cant	Tumwater, Washington	(360) 902-5495
Enforcement	Stephen M. Cant	Tumwater, Washington	(360) 902-5495

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No. Explain why no statement was prepared.

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Yes A preliminary cost-benefit analysis may be obtained by contacting:

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Olympia, WA 98504-4620

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e-mail scij235@lni.wa.gov

No: Please explain:

CR 102 RULE-MAKING ORDER (RCW 34.05.320)

Department of Labor and Industries
Division of Occupational Safety and Health
CR-102 Filing Date: April 24, 2008
Hearing Date: -- see below
Page 1

Attachment (1)
(Hearing)

(2) **Hearing Locations:**

Date: April 28, 2008 Time: 1:00 p.m.
Comfort Inn - Tumwater
1620 74th Ave. SW
Tumwater, Washington 98501

Date: April 29, 2008 Time: 1:00 p.m.
Quality Inn Baron Suites
100 E. Kellogg Road
Bellingham, Washington 98226

Date: April 30, 2008 Time: 9:00 a.m.
Yakima Clarion Hotel and Conference Center
1507 N. First St.
Yakima, Washington 98901

Date: April 30, 2008 Time: 2:00 p.m.
Red Lion Hotel Richland – Hanford House
802 George Washington Way
Richland, WA 99352

Date: May 1, 2008 Time: 1:00 p.m.
Red Lion Hotel at the Park
W. 303 North River Drive
Spokane, Washington 99201

Additional hearing:

Date: May 2, 2008 Time: 2:00 p.m.
Washington State Convention and Trade Center
Level 3 – South
Room 307-308
800 Convention Place
Seattle, WA 98101-2350

Submit written comments to:

Jamie Scibelli, Administrative Regulations Analyst
Division of Occupational Safety and Health
P.O. Box 44620
Olympia, Washington 98504-4620

By: 5:00 p.m. on May 2, 2008.

In addition to written comments, the department will accept comments submitted to the following fax number: (360) 902-5619

Comments submitted by fax must be 10 pages or less.



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

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Agency: Department of Labor and Industries

- | | |
|--|---|
| <input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 07-01-101 ; or | <input checked="" type="checkbox"/> Original Notice |
| <input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or | <input type="checkbox"/> Supplemental Notice to WSR _____ |
| <input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4). | <input type="checkbox"/> Continuance of WSR _____ |

Title of rule and other identifying information: WAC 296-62-095, Heat-related illness in the outdoor environment

Hearing location(s): See Attachment 2.

Date: _____ Time: _____

Date of intended adoption: June 4, 2008

(Note: This is NOT the effective date)

Submit written comments to:

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Beverly Clark by April 14, 2008

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- | | | |
|-------------------------|------------------------------|--|
| 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:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 19, 2008

TIME: 10:43 AM

WSR 08-07-098

DATE
March 19, 2008

NAME
Judy Schurke

SIGNATURE

TITLE
Director

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: Department of Labor and Industries

- Private
- Public
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fax (360)902-5619
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No: Please explain:

NEW SECTIONS:

WAC 296-62-095, Heat-related illness in the outdoor environment.
WAC 296-62-09510, Scope and purpose.
WAC 296-62-09520, Definitions.
WAC 296-62-09530, Employer responsibility.
WAC 296-62-09540, Drinking water.
WAC 296-62-09550, Responding to signs and symptoms of heat-related illness.
WAC 296-62-09560, Information and training.

The Washington State Constitution mandates that “The legislature shall pass laws for the protection of persons working in mines, factories, and other employments dangerous to life or deleterious to health.”¹ In enacting Chapter 49.17 RCW, Washington Industrial Safety and Health Act (WISHA), the Washington Legislature found “that personal injuries and illnesses arising out of conditions of employment impose a substantial burden upon employers and employees in terms of lost production, wage loss, medical expenses, and payment of benefits under the industrial insurance act. Therefore, in the public interest for welfare of the people of the state of Washington and in order to assure, insofar as may be reasonably possible, safe and healthful working conditions for every man and woman working in the state of Washington, the legislature...in keeping with the mandates of Article II, section 35 of the state Constitution, declares its purpose by the provisions of this chapter to create, maintain, continue, and enhance the industrial safety and health program of the state...”²

WISHA mandates that the Director of L&I shall “[p]rovide for the promulgation of health and safety standards and the control of conditions in all work places concerning...harmful physical agents which shall set a standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity.”³

On July 18, 2005, a farm worker collapsed while cutting weeds with a machete in hop fields near Yakima. He died, and the coroner ruled that the cause of death was heat stroke. L&I investigated the death and later cited and fined the company for an inadequate safety program, not providing drinking water, and lack of training for workers. The safety program should have included a plan to prevent heat stress by providing rest breaks, shade, worker hydration and administrative controls such as a work-rest regimen.

The citation was issued December 23, 2005, and the subsequent appeal was affirmed with a negotiated penalty of \$3,000. L&I did not seek criminal sanctions since the violations cited were not considered willful (a prerequisite for a referral to a County Prosecuting Attorney).

Immediately following this workplace death, L&I heard from farm worker advocates that they were very concerned about this fatality and that they wanted an emergency rule issued similar to California’s emergency heat-stress rule. L&I responded by issuing a hazard alert to the agriculture industry, and then proceeded with a study to determine what was needed to protect workers for the 2006 summer season.

¹ Wash. Const. art. 2 § 35.

² RCW 49.17.010.

³ RCW 49.17.050(4).

L&I reviewed the workers' compensation injury and illness claims from 1995 through 2005 and found that one other person had died from heat stress in Washington (a lawn-service employee working in the Yakima area). The study also found approximately 450 workers' compensation claims for heat-related illness during the same time period. These fatalities may have been prevented with rules that are more protective of workers.

Based on this information, L&I evaluated its existing rules to determine if they adequately addressed heat-related illness. After this evaluation, L&I believed that these fatalities and illnesses may have been prevented with rules that are more protective of workers. In *Rios v. Dept. of L&I*, the Washington Supreme Court concluded that L&I must consider rulemaking for recognized work place hazards.⁴

During that time, L&I held extensive meetings with business and labor representatives and worker advocates, and began developing an awareness and education campaign that would occur over the summer of 2006 regardless of the final decision regarding adopting a rule. Worker advocate groups felt very strongly about the heat-stress issue and didn't believe this emergency rule was specific enough. On the other hand, some employers wanted no rule at all.

In the end, L&I concluded that the best approach was to adopt an emergency rule that extended an existing rule on indoor work in hot temperatures (WAC 296-62-09013) to include outdoor work. The emergency rule was effective June 1, 2006 and remained in place for 120 days.

The 2006 emergency rule stated that every employer must evaluate their workplace and have procedures in place if their employees will be at risk from heat-related illnesses. They were required to look at things such as adequate water and shade, how to recognize heat stress, and what to do about it.

That summer, L&I launched a coordinated hazard-awareness campaign with business and labor organizations concentrating on businesses most affected by hot weather, such as construction (especially road work) and agriculture. As part of regularly scheduled inspections and consultations in affected industries, L&I staff also visited farms and other employers throughout the summer to make sure they were protecting their workers from heat-related illness.

In the summer of 2006, Washington State suffered the loss of 2 employees due to heat-related illness.

- On May 18, 2006 an employee passed away as a result of heat-related illness he developed on July 12, 2004. The employee was a roofer and collapsed while working. He arrived at the emergency room with a core temperature of 108°F. The employee did return to consciousness but never fully recovered. At the time of his death, he was awaiting a liver transplant.
- On June 26, 2006 at approximately 2:30 p.m., a laborer/pipefitter became ill on an excavation project in Carson, WA. The crew had been working since 8:30 a.m., and the ambient temperature rose throughout the day to over 100 degrees Fahrenheit. He was transported to Emmanuel Hospital in Portland, OR, where he died five days later, on July 1, 2006.

⁴ Hillis, 131 Wn.2d at 383.

After the expiration of the 2006 emergency rule, L&I consulted with DOSH compliance and consultation staff and held a stakeholder meeting to discuss the experiences with the emergency rule and pre-proposal draft issues. In addition, on January 26, 2007, L&I received a petition for rulemaking from Columbia Legal Services with specific recommendations for permanent rule requirements and content.

From January to April 2007, L&I drafted, revised and circulated a draft rule. During this time, the draft rule was widely distributed to stakeholders for comment. In addition, L&I solicited input from stakeholders through several stakeholder discussions then updated the draft based on stakeholder input. This language was posted on the L&I website and circulated to stakeholders that same day. Before the adoption of the second emergency rule, L&I met with business representatives to discuss the draft language. L&I updated the language as a result of this discussion.

Based on this input, L&I developed a draft rule that was significantly different from the emergency rule language adopted during the summer of 2006. This new language clearly communicated the L&I's expectations while allowing employers the ability to create heat-related illness procedures that will be most effective for their worksites. The draft rule was sent to stakeholders for a review process. L&I also held a stakeholder meeting.

While L&I planned to continue development of a permanent heat-related illness rule, it was important to have a rule that provided clear expectations to employers in place during the summer of 2007. This rule was intended to reduce or eliminate the number of serious incidents and fatalities by increasing worker protection from heat-related illness while L&I continued the permanent rulemaking process. An emergency rule was necessary to ensure protection of workers during the summer months when there is a greater risk for heat-related illness. In addition, L&I provided awareness training for employers over the summer.

On June 5, 2007, L&I filed a second emergency rule. Additional training materials and courses were offered. Also during the summer, L&I developed and distributed public service announcements for HRI prevention in Washington State. L&I conducted 242 HRI consultation visits for employers and 707 compliance inspections. No employee HRI deaths occurred in 2007.

From August 9, 2007 through September 14, 2007, L&I solicited comments on the emergency rule language. L&I also held stakeholder meetings to discuss the rule language in Yakima, Spokane, Tumwater, and Bellevue. After L&I reviewed the stakeholder input, the emergency rule language was updated based on the comments received.

This updated draft was discussed with a group of business and labor representatives in November 2007. As a result of this discussion, L&I developed a draft for proposal.

CR 102 RULE-MAKING ORDER (RCW 34.05.320)

Department of Labor and Industries
Division of Occupational Safety and Health
CR-102 Filing Date: March 19, 2008
Hearing Date: -- see below
Page 1

Attachment (2)
(Hearing)

(2) Hearing Locations:

Date: April 28, 2008 Time: 1:00 p.m.
Comfort Inn - Tumwater
1620 74th Ave. SW
Tumwater, Washington 98501

Date: April 29, 2008 Time: 1:00 p.m.
Quality Inn Baron Suites
100 E. Kellogg Road
Bellingham, Washington 98226

Date: April 30, 2008 Time: 9:00 a.m.
Yakima Clarion Hotel and Conference Center
1507 N. First St.
Yakima, Washington 98901

Date: April 30, 2008 Time: 2:00 p.m.
Red Lion Hotel Richland – Hanford House
802 George Washington Way
Richland, WA 99352

Date: May 1, 2008 Time: 1:00 p.m.
Red Lion Hotel at the Park
W. 303 North River Drive
Spokane, Washington 99201

Submit written comments to:

Jamie Scibelli, Administrative Regulations Analyst
Division of Occupational Safety and Health
P.O. Box 44620
Olympia, Washington 98504-4620

By: 5:00 p.m. on May 2, 2008.

In addition to written comments, the department will accept comments submitted to the following fax number: (360) 902-5619

Comments submitted by fax must be 10 pages or less.