



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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FILED

DATE: July 05, 2022

TIME: 8:29 AM

WSR 22-14-097

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

☒ **Original Notice**

☐ **Supplemental Notice to WSR** \_\_\_\_\_

☐ **Continuance of WSR** \_\_\_\_\_

☒ **Preproposal Statement of Inquiry was filed as WSR 22-11-070 ; or**

☐ **Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_; or

☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

☐ **Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) Amendments to chapter 296-880 WAC, Unified safety standards for fall protection.

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
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August 9, 2022	1:00 p.m.	Dept. of Labor and Industries 12806 Gateway Drive S Tukwila WA 98168	
August 11, 2022	10:00 a.m.	Hilton Garden Inn Spokane Airport 9015 US-2 Spokane WA 99224	
August 15, 2022	1:00 p.m.	Virtual via Zoom Webinar <a href="https://lni-wa.gov.zoom.us/j/84647648222?pwd=eXdDZm11WEZkUBoRkF4SnBRcW1rQT09">https://lni-wa.gov.zoom.us/j/84647648222?pwd=eXdDZm11WEZkUBoRkF4SnBRcW1rQT09</a> Phone: 253-215-8782 Meeting ID: 846 4764 8222 Passcode: 416963061	

**Date of intended adoption:** September 20, 2022 (Note: This is **NOT** the **effective** date)

### Submit written comments to:

Name: Carmyn Shute, Administrative Regulations Analyst

Address: Department of Labor & Industries  
Division of Occupational Safety and Health  
PO Box 44620  
Olympia WA 98504-4620

Email: [Carmyn.Shute@lni.wa.gov](mailto:Carmyn.Shute@lni.wa.gov)

Fax: 360-902-5619

Other:

By (date) August 25, 2022

### Assistance for persons with disabilities:

Contact Carmyn Shute

Phone: 360-902-6081

Fax: 360-902-5619

TTY:

Email: Carmyn.Shute@Lni.wa.gov

Other:

By (date) August 2, 2022

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** In August 2021, the Division of Occupational Safety and Health (DOSH) received notification from the Federal Occupational Safety and Health Administration (OSHA) relating to DOSH's fall protection standard. The notification advised L&I that DOSH needed to amend our fall protection rule in chapter 296-880 WAC in order to be at least as effective as those administered by OSHA, as required by the Washington State Plan. This rulemaking proposes changes to sections of the current fall protection rule that address roofing activities including leading edge work; work performed on a low or flat pitch roof, and ski area facility and operations.

#### **Chapter 296-880 WAC Unified Safety Standards for Fall Protection**

- WAC 296-880-090 Quick reference guide.
  - Roofing work on a low pitch roof. Threshold height change from ten feet to six feet.
  - Constructing a leading edge. Threshold height change from ten feet to six feet.
  - Ski area facilities and operations: Working at unprotected elevated locations. Threshold height change from more than ten feet to four feet or more.
- WAC 296-880-095 Definitions.
  - Added definition for "Infrequent".
  - Removed definition for "Predictable and regular basis."
  - Clarified definition for "Safety watch system."
  - Added definition for "Temporary."
- WAC 296-880-20005 Fall protection required at four feet or more.
  - Added clarifying statement noting when fall protection is required at four feet or more.
  - Subsection (7)(e) added option for use of a guardrail.
  - Subsection (7)(f) added option for use of a safety watch system if appropriate.
  - Added exception for when work other than construction work is being performed under certain circumstances.
  - Subsection (8) Safety watch system was removed.
  - Subsection (9) was renumbered to subsection (8).
  - Subsection (10) was renumbered to subsection (9).
- WAC 296-880-30005 Construction work.
  - Subsection (1) height threshold was changed from ten feet to six feet.
  - Subsection (1)(c) renumbered to Subsection (2) and further clarification provided regarding when fall protection is needed at hazards of ten feet or more to the ground.
  - Subsection (1)(d) renumbered to Subsection (2)(b).
  - Subsection (2) renumbered to Subsection (3).
- WAC 296-880-30055 Ski area facilities and operations.
  - Subsection (1)(a) fall hazard height threshold reduced from ten feet to four feet or more.
- WAC 296-880-40005 Guardrail systems.
  - Subsection (2)(d) reference to subsection (g) replaced with reference to subsection (h)(ii).
- WAC 296-880-40050 Safety watch system requirements.
  - Subsection (1) clarified language regarding when a safety watch system can be used.
  - Subsection (2)(a) removed "repair work or servicing equipment" and replaced with "work activity."
  - Subsection (2)(b) removed "repair" and "or service" to be consistent in the section.

**Reasons supporting proposal:** The proposed rule is needed to align standards on when fall protection must be in place with OSHA's standards as required under the Washington State Plan. Several housekeeping changes are being proposed to ensure there is clarity on when fall protection is needed and differentiate what provisions of the chapter apply to construction work activities.

**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: Federal OSHA regulation 29 CFR 1910 and 1926.

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** No additional comments.**Name of proponent:** (person or organization) Department of Labor & Industries☐ Private☐ Public☒ Governmental**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Chris Miller	Tumwater, WA	360-902-5516
Implementation:	Craig Blackwood	Tumwater, WA	360-902-5828
Enforcement:	Craig Blackwood	Tumwater, WA	360-902-5828

**Is a school district fiscal impact statement required under RCW 28A.305.135?**☐ Yes ☒ No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

**Is a cost-benefit analysis required under RCW 34.05.328?**☐ Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

☒ No: Please explain: A cost-benefit analysis is not required because the proposed changes adopt federal OSHA regulations as required to be as effective as OSHA and are exempt under RCW 34.05.328(5)(b)(iii).**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):☒ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description: Portions of this rule are being amended in order to conform to the requirement to remain at least as effective as OSHA under the Washington State Plan. Parts of this rule related to the use of fall protection that addresses roofing activities including leading edge work, work performed on a flat or low pitch roof, and ski area facility and operations are being addressed pursuant to the request of OSHA in their letter to the agency in August of 2021.

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

☒ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

☐ RCW 34.05.310 (4)(b)  
(Internal government operations)

☒ RCW 34.05.310 (4)(c)  
(Incorporation by reference)

☒ RCW 34.05.310 (4)(d)  
(Correct or clarify language)

☐ RCW 34.05.310 (4)(e)  
(Dictated by statute)

☐ RCW 34.05.310 (4)(f)  
(Set or adjust fees)

☐ RCW 34.05.310 (4)(g)  
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

☐ This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.  
Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☐ No Briefly summarize the agency's analysis showing how costs were calculated. \_\_\_\_\_

☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Date:** July 5, 2022

**Name:** Joel Sacks

**Title:** Director

**Signature:**

*Joel Sacks*