



Washington Hospitality Association

To: Washington State Department of Labor and Industries via: Cynthia.ireland@lni.wa.gov

Date: October 12, 2021

RE: Wildfire Smoke Rulemaking: Chapter WAC 296-62-085

On behalf of the Washington Hospitality Association and the more than 6500 restaurants, hotels and local hospitality businesses we represent state-wide, we would like to express our appreciation for the Department moving forward with the traditional rulemaking process. We find extreme value in returning to a more robust stakeholder process on issues such as the Wildfire Smoke.

The Washington Hospitality Association appreciates the opportunity to participate in these discussions and respectfully asks the Department to thoughtfully consider the following suggestions and initial comments:

Purpose and Scope

In current form, the proposal strays drastically from the current version of WAC 296-62-08510 Subsection 3 and calls into question the scope of the rule and the Departments authority to make such changes under the current 101. By removing “for wildfire smoke” in (1) of the scope, the Department is affectively changing the scope to be an air quality rule, which is not identified under WAC 296-62-08510 Subsection 3 or the filed 101. We do not believe the Department has this authority under the petitioned rule making and ask the department to add back in the following language: “for wildfire smoke.”

Identification of Harmful Exposures

While the flexibility and several approved air quality tools are appreciated, we believe that the Department should share some responsibility in ensuring employers are aware of the risks as they arise. Small businesses are not scientists nor are they meteorologists, so the assistance professionals who work within the department is needed. We believe that the responsibility of identifying the PM 2.5 at the jobsite should not rest solely on the employer.

Air Quality Index

The Washington Hospitality Association and the Department of Labor and Industries have the shared value of keeping our employees safe and providing a safe work environment. In order to reach the same goal as the Department, small businesses need rules that are realistically able to comply with. The proposed AQI of 69 as the trigger level for employee notification requirements puts employers across the state at risk of noncompliance. While we agree that employees have a right to know that they can wear face protection without risk of retaliation, we believe this can be done effectively during the annual training requirements and/or on labor posters.

An AQI of 69 can happen anytime without the threat of wildfire smoke, which makes it a confusing trigger point for the employer requirement to monitor the AQI and notify. A specific example for instance is the last week of June 2021. While temperatures drove into the 100’s, the Department of Ecology’s AQI tool recorded most of the state was well above the AQI level of 69 without having a wildfire threat. Without the threat of a wildfire, an employer is not technically required to monitor the AQI under the rule, however under the draft rule they are out of compliance.



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Additionally, the state of California and the state of Oregon have both adopted similar rules to the proposal before us and has adopted a notification trigger AQI of 151. While we know that mask requirements start at an AQI of 151 or higher, the notifying employees would start at 69 in Washington. Alignment with neighbors would be reasonable and logical.

We ask the department to remove the informing employee's requirement of an AQI 69 or more after two consecutive readings to instead inform employees of their rights in the annual training set out by the rule and/or labor posters.

Hazard Communication

See comments above on proposed additions to training and the removal of hazard communication at the AQI level of 69.

Training Requirements

See comments above on proposed additions to training and the addition of know your rights at the AQI level of 69.

We appreciate the opportunity to comment and thank you in advance for your consideration of our concerns. Modification is necessary to ensure appropriate rules are created and that employers will be able to protect their workers from scientifically confirmed conditions.

Cheers,

Samantha Louderback

Senior Manager, State Government Affairs

Washington Hospitality Association