

WSR 23-18-077
EXPEDITED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed September 5, 2023, 8:33 a.m.]

Title of Rule and Other Identifying Information: Chapter 296-62 WAC, General occupational health standards, Part R-1—Surgical smoke; WAC 296-62-510 Surgical smoke, 296-62-51010 Scope and application, 296-62-51020 Definitions, 296-62-51030 Surgical smoke program, 296-62-51040 Surgical smoke evacuation systems, 296-62-51060 Effective dates, and 296-62-51070 Appendix A.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to add a new part (R-1—Surgical smoke) to chapter 296-62 WAC, General occupational health standards. The new part is necessary for the department of labor and industries (L&I) to implement and enforce SHB 1779, passed by the Washington state legislature in 2022 (codified as RCW 49.17.500), which becomes effective January 1, 2024. SHB 1779 requires employers in hospitals and ambulatory surgical centers to adopt and adhere to policies covering the use of smoke evacuation systems to protect workers who may be exposed to surgical smoke.

The proposed rule adopts language from RCW 49.17.500 and provides clarity regarding which employers are covered under the scope. RCW 49.17.500 states the law does not apply to hospitals with fewer than 25 acute care beds in operation. L&I interprets "in operation" as "licensed" beds to make sure the rule applies to the correct facilities.

Reasons Supporting Proposal: Surgical smoke is a mixture of particulates, vapors, and gases released by energy generating medical devices. Devices utilize lasers, electricity, heat, or plasma to cut, remove, or adhere body tissues. Smoke is irritating and may include toxic or infectious components. Evacuation systems utilize a suction system, which may be incorporated into the surgical tool, to capture the smoke and filter or exhaust it away from workers and patients.

The rule making is needed to ensure hospitals and ambulatory surgical centers understand what requirements they must meet in regard to employee exposure to surgical smoke. The rule making is also needed for L&I to implement and enforce the requirements established by RCW 49.17.500.

Statutory Authority for Adoption: RCW 49.17.500.

Statute Being Implemented: RCW 49.17.500.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy West, Tumwater, Washington, 360-902-6954; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated

regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The new rule language being proposed under chapter 296-62 WAC adopts, without material change, the workplace safety and health requirements described under RCW 49.17.500.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO AJ Wagner, L&I, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504, phone 360-515-6220, fax 360-902-5619, email Arthur.Wagner@lni.wa.gov, AND RECEIVED BY November 6, 2023.

September 5, 2023
Joel Sacks
Director

OTS-4625.2

PART R-1—SURGICAL SMOKE

NEW SECTION

WAC 296-62-510 Surgical smoke.

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NEW SECTION

WAC 296-62-51010 Scope and application. (1) This section applies to surgical smoke exposures in hospitals, as defined in RCW 70.41.020, and ambulatory surgical facilities, as defined in RCW 70.230.010.

(2) Exposures to surgical smoke in other health care settings and exposures to similar smokes, particulates, vapors, and gases in other settings are covered under chapter 296-841 WAC, Airborne contaminants, and other applicable substance specific standards.

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NEW SECTION

WAC 296-62-51020 Definitions. The following definitions apply to this section:

Smoke evacuation system. Equipment designed to capture and neutralize surgical smoke at the point of origin, before the smoke makes contact with the eyes or the respiratory tract of occupants in the room. Smoke evacuation systems may be integrated with the energy generating device or separate from the energy generating device.

Surgical smoke. The by-product that results from contact with tissue by a tool that performs a surgical function using heat, laser, electricity, or other form of energy.

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NEW SECTION

WAC 296-62-51030 Surgical smoke program. (1) Employers must have a written surgical evacuation smoke program for any procedure that may generate surgical smoke.

(2) The surgical smoke evacuation program must have the following elements:

(a) Selection of surgical smoke evacuation systems.

(b) Required use of a surgical smoke evacuation system during any planned surgical procedure that is likely to generate surgical smoke which would otherwise make contact with the eyes or respiratory tract of the occupants of the room.

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NEW SECTION

WAC 296-62-51040 Surgical smoke evacuation systems. (1) Employers must control employee exposure to surgical smoke with surgical smoke evacuations systems, as feasible.

(2) Surgical smoke evacuation systems must capture and neutralize surgical smoke before it makes contact with the eyes or respiratory tracts of room occupants.

(a) Surgical smoke should be captured as close to the point of origin or point at which it is released from the body of the patient as feasible.

(b) The system must neutralize the smoke in a manner that protects the safety of room occupants by filtering, safely exhausting outside or to a building exhaust system, or otherwise treating the air in a manner that protects the safety and health of the room occupants and other employees.

Note: Subject to funding being made available by the legislature, between January 2, 2025, and June 30, 2025, hospitals that meet certain criteria may apply for reimbursement of up to \$1,000 per operating room for smoke evacuation systems that were purchased and installed on or before January 1, 2025. See WAC 296-62-51070 Appendix A for details.

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NEW SECTION

WAC 296-62-51060 Effective dates. (1) Chapter 296-62 WAC, Part R-1, is effective January 1, 2024.

(2) WAC 296-62-51030 and 296-62-51040 do not apply to the following establishments until January 1, 2025:

(a) Hospitals certified as critical access hospitals under 42 U.S.C. Sec. 1395i-4;

(b) Hospitals with fewer than 25 licensed acute care beds;

(c) Hospitals certified by the centers for medicare and medicaid services as sole community hospitals; and

(d) Hospitals that qualify as a medicare dependent hospital.

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NEW SECTION

WAC 296-62-51070 Appendix A—Nonmandatory—Reimbursement for smoke evacuation systems. Equipment cost reimbursement.

(1) Subject to funding being made available by the legislature, the following hospitals may apply for reimbursement of costs for purchase and installation of surgical smoke evacuation equipment:

(a) Hospitals certified as critical access hospitals under 42 U.S.C. Sec. 1395i-4;

(b) Hospitals with fewer than 25 licensed acute care beds;

(c) Hospitals certified by the centers for medicare and medicaid services as sole community hospitals; and

(d) Hospitals that qualify as a medicare dependent hospital.

(2) Costs must be incurred by the hospital on or before January 1, 2025.

(3) Reimbursement is limited to \$1,000 for each operating room in the hospital.

(4) Reimbursement requests may be submitted from January 2, 2025, until April 30, 2025. If moneys in the reimbursement account are exhausted, no further requests will be processed.

(5) To apply for reimbursement, the hospital must follow the directions posted on the department website, <https://www.lni.wa.gov/>.

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WSR 23-18-081

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed September 5, 2023, 11:34 a.m.]

Title of Rule and Other Identifying Information: WAC 458-19-030 Levy limit—Consolidation of districts and 458-19-035 Levy limit—Annexation.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 458-19-030 and 458-19-035 to incorporate 2023 legislation HB 1303 and 1527. HB 1303 clarifies how the levy limit is calculated for taxing districts that have been consolidated. HB 1527 authorizes taxing districts that have been consolidated or annexed to include increases in assessed values due to the creation of certain tax increment finance areas.

Reasons Supporting Proposal: Updating these rules will provide clarity to county assessors on how to calculate the levy limits for taxing districts under these special circumstances.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.55.060.

Statute Being Implemented: RCW 84.55.020 and 84.55.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is applicable to these rule updates because the department is incorporating changes resulting from 2023 legislation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Leslie Mullin, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1589, fax 360-534-1606, email LeslieMu@dor.wa.gov, AND RECEIVED BY November 6, 2023.

September 1, 2023
Atif Aziz

OTS-4901.2

AMENDATORY SECTION (Amending WSR 15-03-087, filed 1/21/15, effective 2/21/15)

WAC 458-19-030 Levy limit—Consolidation of districts. (1) **Introduction.** This rule describes the method used to calculate the first levy for a taxing district created by the consolidation of similar taxing districts in accordance with RCW 84.55.020.

(2) **Calculation of the first levy of a consolidated taxing district.** The first regular property tax levy made by a taxing district, created by the consolidation of two or more similar taxing districts, cannot exceed:

(a) The sum of the product of the limit factor multiplied by the ~~((highest))~~ amount of regular property taxes ~~((lawfully levied by each of the component districts during the three most recent years in which taxes were levied))~~ each component taxing district could have levied under RCW 84.55.092; plus

(b) The sum of each of the amounts calculated by multiplying the regular property tax levy rate of each of the component districts for the preceding year by the increase in assessed value in each component district resulting from:

(i) New construction;

(ii) Improvements to property;

(iii) Increases in the assessed value of state assessed property;

~~((and))~~

(iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under ~~((chapter 84.55))~~ RCW 84.55.020 for purposes of providing an additional dollar amount. The property may be classified as real or personal property; and

(v) Increases in assessed value of real property, as defined in RCW 39.114.010, within an increment area as designated by any local government under RCW 39.114.020 if the increase is not included elsewhere under RCW 84.55.020. This subsection (2)(b)(v) does not apply to:

(A) Levies by the state;

(B) Levies by a port district for purposes of making required payments of principal and interest on general indebtedness; and

(C) Levies by a public utility district for purposes of making required payments of principal and interest on general indebtedness.

(3) **Example.** Taxing district "A" and taxing district "B" consolidate, becoming one taxing district. The highest amount of regular property taxes ~~((lawfully levied by))~~ district "A" ~~((during the three most recent years))~~ could have levied under RCW 84.55.092 is \$100,000. The highest amount of regular property taxes ~~((lawfully levied by))~~ district "B" ~~((during the three most recent years))~~ could have levied under RCW 84.55.092 is \$150,000. The increase in assessed value due to ~~((new construction, improvements to property, increases in the as-~~

~~assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities)) amounts from subsection (2)(b)(i) through (v) of this rule in district "A" since the year prior to consolidation was \$600,000. The increase in assessed value due to ((new construction, improvements to property, increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities)) amounts from subsection (2)(b)(i) through (v) of this rule in district "B" since the year prior to consolidation was \$900,000. The regular property tax rate for district "A" in the year prior to consolidation was \$0.50 per \$1,000 of assessed value. The regular property tax rate for district "B" in the year prior to consolidation was \$0.45 per \$1,000 of assessed value. Assume the limit factor for this example is 101((%)) percent because it is the lesser of ((one hundred one)) 101 percent and ((one hundred)) 100 percent plus the rate of inflation. The maximum amount of regular property taxes that can be levied in the year of consolidation, for taxes payable the following year, by the new consolidated taxing district is calculated as follows:~~

	Highest regular levy	
District "A" -	\$100,000	
District "B" -	150,000	
Total -	\$250,000	x 1.01 = \$252,500
Increases in assessed value multiplied by levy rate:		
District "A" - \$600,000 x \$0.50 ÷ \$1,000		= \$300
District "B" - \$900,000 x \$0.45 ÷ \$1,000		= \$405
		\$705

Maximum regular property taxes that can be levied in the year of consolidation, payable in the year following consolidation:

$$\$252,500 + \$705 = \$253,205$$

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.08.080, 84.48.200, 84.52.0502, and 84.55.060. WSR 15-03-087, § 458-19-030, filed 1/21/15, effective 2/21/15. Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). WSR 02-24-015, § 458-19-030, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. WSR 94-07-066, § 458-19-030, filed 3/14/94, effective 4/14/94.]

AMENDATORY SECTION (Amending WSR 15-03-087, filed 1/21/15, effective 2/21/15)

WAC 458-19-035 Levy limit—Annexation. (1) **Introduction.** One taxing district may annex territory or another dissimilar taxing district from outside the annexing taxing district's boundary. This rule sets forth the method used to calculate the first regular property tax levy made after a taxing district has annexed territory or a dissimilar taxing district in accordance with RCW 84.55.030 and 84.55.110. This rule also explains what occurs when the department of natural resources (DNR) discontinues forest fire patrol assessments on parcels of forest land.

(2) **Increase in territory due to annexation.** The first regular property tax levy of a taxing district after it annexes territory or a dissimilar taxing district cannot exceed the amount calculated as follows:

(a) Multiply the highest amount of regular property taxes that could have been lawfully levied since 1985 for 1986 collection, of the annexing district as though no annexation had occurred, by the limit factor as defined in RCW 84.55.005 and WAC 458-19-005;

(b) Multiply the regular property tax levy rate of the annexing district for the preceding year by the increase in assessed value in the annexing district resulting from:

(i) New construction;

(ii) Improvements to property;

(iii) Increases in the assessed value of state assessed property;

((and))

(iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property; and

(v) Increases in assessed value of real property, as defined in RCW 39.114.010, within an increment area as designated by any local government in RCW 39.114.020 if the increase is not included elsewhere under RCW 84.55.030. This subsection (2) (b) (v) does not apply to:

(A) Levies by the state;

(B) Levies by a port district for purposes of making required payments of principal and interest on general indebtedness; and

(C) Levies by a public utility district for purposes of making required payments of principal and interest on general indebtedness.

(c) Multiply the current year assessed value of the annexed territory or district by the levy rate that would have been used for the current year by the annexing district had there been no annexation. To calculate the levy rate that would have been used for the current year by the annexing district, divide the regular levy limit of the annexing district by the current assessed value of the annexing district, excluding the annexed area.

(d) Add together the ~~((result of each of the calculations set forth))~~ amounts from each calculation in subsection (2) (a), (b), and (c) of this rule to determine the maximum amount of the first regular levy of a taxing district after annexation.

(3) **Example.** ~~((Following is an example of the calculations prescribed in subsection (2) of this rule.))~~ Taxing district "A" annexes a portion of taxing district "B" that takes effect before August 1st in ~~((2014))~~ 2026. The highest amount of regular property taxes that could have been levied by district "A" since 1985 for 1986 collection is \$100,000. The increase in assessed value from ~~((2013 to 2014))~~ 2025 to 2026 in district "A" due to ~~((new construction, improvements to property, increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities))~~ amounts from subsection (2) (b) (i) through (v) of this rule is \$700,000. The levy rate for district "A" for ~~((2013))~~ 2025 was \$0.50 per \$1,000 of assessed value. The ~~((2014))~~ 2026 levy rate for district "A," had there been no annexation, would have been \$0.48 per \$1,000 of assessed value. The ~~((2014))~~ 2026 assessed value of the portion of taxing district "B" that was annexed by taxing district "A" is \$5,000,000, which includes

~~((the value of new construction, improvements to property, increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities))~~ amounts from subsection (2)(b)(i) through (v) of this rule. Assume the levy limit for this example is 101(~~(%)~~) percent because it is the lesser of (~~(one hundred one)~~) 101 percent and (~~(one hundred)~~) 100 percent plus the rate of inflation. The first regular levy by taxing district "A" after annexation cannot exceed the amount calculated as follows:

District "A" highest levy since 1985 -	\$100,000
	x 1.01
	\$101,000
A.V. of new construction* in district "A" -	\$700,000
District "A" levy rate for ((2013)) <u>2025</u> -	x 0.50
	\$350,000
Divide by \$1,000 -	÷ 1,000
Levy amount for new construction -	\$350
((2014)) <u>2026</u> A.V. of annexed portion of district "B" -	\$5,000,000
District "A" levy rate that would have been used in ((2014)) <u>2026</u> , absent annexation -	x 0.48
	\$2,400,000
Divide by \$1,000 -	÷ 1,000
Levy amount for annexed part of district "B" -	\$2,400
	\$101,000
	350
	+ 2,400
Maximum levy amount for district "A" after annexation -	\$103,750

* For purposes of this example, "new construction" (~~(also)~~) includes (~~(improvements to property, increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities))~~ amounts from subsection (2)(b)(i) through (v) of this rule.

(4) **Loss of territory due to annexation.** When a taxing district loses a portion of its territory as a result of annexation to another district, the levy limit for the taxing district that loses part of its territory is calculated by multiplying the highest amount that could have been lawfully levied by that taxing district since 1985 for 1986 collection by the limit factor as defined in RCW 84.55.005 and WAC 458-19-005. However, only the increase in assessed value from the preceding year, attributable to (~~(new construction, improvements to property, increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities))~~ amounts from subsection (2)(b)(i) through (v) of this rule that occurred in the remaining territory of the taxing district is added to the amount determined, to calculate the levy limit. Except for voter approval of an excess levy, the levy rate cannot exceed the statutory dollar rate limit for that type of taxing district.

(5) **Forest fire patrol protection assessments discontinued by DNR - Effect.** If an owner of forest land within a forest protection zone neglects or fails to provide adequate fire protection as required by RCW 76.04.600, DNR will provide this protection and impose an annual

assessment on each parcel of forest land in accordance with RCW 76.04.610. When DNR discontinues the forest fire patrol assessment by dissolving the forest protection assessment areas and an existing fire district assumes protection services and property tax levying authority for this unimproved land within its existing boundaries, the assessed value of the fire district will increase and effectively be an annexation for property tax purposes. In order to be included in the assessed value of the fire district, all details of the dissolution and annexation must be completed and the county assessor's office must receive formal notice from the fire district and DNR prior to August 1st of the assessment year. This notice must specify the forest fire patrol assessment areas being dissolved, the fire district(s) assuming the levying and fire protection responsibilities, and the forest land impacted by the change.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.08.080, 84.48.200, 84.52.0502, and 84.55.060. WSR 15-03-087, § 458-19-035, filed 1/21/15, effective 2/21/15. Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). WSR 02-24-015, § 458-19-035, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. WSR 94-07-066, § 458-19-035, filed 3/14/94, effective 4/14/94.]