



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, 2009 (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: See Attachment 1.

Citation of existing rules affected by this order:

Repealed: None
 Amended: See Attachment 2.
 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 08-23-084 on November 18, 2008.

Describe any changes other than editing from proposed to adopted version: None.

WAC 296-62-095 currently applies to agriculture employers. This identical language from WAC 296-62-095 is being adopted into chapter 296-307 WAC, Safety Standards for Agriculture. As a result, no new or additional requirements or costs will be created for agriculture employers.

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:

March 18, 2009

NAME

Judy Schurke

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 18, 2009

TIME: 8:54 AM

WSR 09-07-098

**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	Repealed	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	Repealed	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>7</u>	Amended	<u>5</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

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	Repealed	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

	New	<u>7</u>	Amended	<u>5</u>	Repealed	<u>0</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>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Purpose:

The purpose of this project is to include the adopted Outdoor Heat Exposure rule in Chapter 296-307 WAC, Safety Standards for Agriculture.

During the public comment period for the Outdoor Heat Exposure rule, the Department received comments from stakeholders who believed that Chapter 296-62 WAC, General Occupational Health Standards does not apply currently to Chapter 296-307 WAC, Safety Standards for Agriculture.

Although it was determined that the Department is permitted by RCW 49.17.041 to specifically reference the general industry safety rules, the Department agreed to initiate rulemaking to incorporate Outdoor Heat Exposure requirements into chapter 296-307 WAC.

RCW 49.17.041 requires the Department to establish an agricultural safety rule that includes two parts: 1) agricultural-specific rules for agricultural employers; and 2) specific references to the general industry safety rule adopted under chapter 49.17 RCW. ¹ Furthermore, agricultural employers are to be exempt from the general industry safety rule adopted under chapter 49.17 RCW for all rules *not specifically referenced* in the agricultural safety rule.²

Currently, the agricultural safety rule, Chapter 296-307 WAC, specifically states agricultural employers are covered by the requirements of Chapter 296-62 WAC, General Occupational Health Standards. WAC 296-307-006 (3) states, “All agricultural operations are also covered by the requirements of chapter 296-62 WAC, general occupational health rules.”

While the Department has determined that the requirements in Chapter 296-62 WAC apply to agricultural employers, the Department has decided to add the language from WAC 296-62-095 to Chapter 296-307 WAC per stakeholder requests.

¹RCW 49.17.041(2)(a)

² RCW 49.17.041(2)(b) (emphasis added).

CR 103 RULE-MAKING ORDER (RCW 34.05.360)

Department of Labor and Industries

Division of Occupational Safety and Health

Hearing Date: January 6, 2009 through January 15, 2009

CR-103 Filing Date: March 18, 2009

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Attachment 2

(Citation of Rules)

Citation of existing rules affected by this order:

AMENDED SECTIONS:

Chapter 296-307 WAC, Safety Standards for Agriculture

WAC 296-307-030, What are the required elements of an accident prevention program?

WAC 296-307-09512, What potable water sources must an employer provide?

WAC 296-307-11015, Violations of this part -- Worker protection standards -- 40 CFR, § 170.9.

WAC 296-307-12020, Entry restrictions -- Standards for workers -- 40 CFR, § 170.112.

WAC 296-307-13045, Personal protective equipment -- Standards for pesticide handlers -- 40 CFR, § 170.240.

REPEALED SECTIONS:

None.