



EXPEDITED RULE MAKING

CR-105 (June 2004)
(Implements RCW 34.05.353)
EXPEDITED RULE MAKING ONLY

Agency: Department of Labor and Industries

Title of rule and other identifying information:
Chapter 296-901-140 WAC, Hazard Communication

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

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AND RECEIVED BY (Date) February 19, 2013

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Occupational Safety and Health Administration (OSHA) adopted the final rules updating its Hazard Communication Standard into alignment with the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). The Department is required to update our rules to be at least as effective as OSHA. The scope of OSHA's Hazard Communication Standard includes requirements for employers as well as chemical manufacturers, importers, and distributors, and the Department's comparable requirements are in separate rules at this time. This rulemaking creates a new rule, WAC 296-901-140, incorporating all the elements of the existing Department rules into one rule to be consistent with OSHA's Hazard Communication Standard. The effective dates of the new rule will be delayed and phased in. During the transition period, there is the option to comply with the applicable requirements in the existing rules or the requirements in the new rule or both. Upon completion of the transition period, the existing standards will be repealed. **(See Attachment 1).**

Reasons supporting proposal:

This rulemaking meets the exemption in Executive Orders 10-06 and 11-03 that allows rules that are required by federal or state law or required to maintain federally delegated or authorized programs.

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:
29 CFR 1910 Subpart Z

DATE
December 18, 2012

NAME (TYPE OR PRINT)
Judy Schurke

SIGNATURE

TITLE
Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 18, 2012
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WSR 13-01-070

Name of proponent: Department of Labor and Industries

- Private
- Public
- Governmental

Name of agency personnel responsible for:

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

N/A

The Occupational Safety and Health Administration (OSHA) adopted the final rules updating its Hazard Communication Standard into alignment with the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). The effective dates of OSHA’s rule are delayed and phased in. The Department is required to update our rules to be at least as effective as OSHA. The scope of OSHA’s Hazard Communication Standard includes requirements for employers as well as chemical manufacturers, importers, and distributors. The Department’s comparable requirements are in separate rules, as follows:

Employer Requirements:

WAC 296-800-170, Employer Chemical Hazard Communication (core rules)
Chapter 296-307 WAC, Part Y-1, Employer Chemical Hazard Communication (agriculture)

Chemical Manufacturer, Importer, and Distributor Requirements:

Chapter 296-839 WAC, Content and Distribution of Material Safety Data Sheets (MSDS) and Label Information
Chapter 296-307 WAC, Part Y-2, Material Safety Data Sheets and Label Preparation (agriculture)

Trade Secrets:

Chapter 296-816 WAC, Protecting Trade Secrets
Chapter 296-62 WAC, Part B-1, Trade Secrets (applies only to agriculture)

In addition, other Department rules specific to activities and workplaces reference the requirements in WAC 296-800-170.

This rulemaking creates a new rule, WAC 296-901-140, incorporating all the elements of the existing Department rules into one rule to be consistent with OSHA’s Hazard Communication Standard. In part, OSHA’s new standard has lengthy mandatory appendices that make it infeasible to split the rule into separate sections. During the transition period, there is the option to comply with the applicable requirements in the existing rules or the requirements in the new rule or both (See Table 1). Upon completion of the transition period, the existing standards will be repealed (See Table 2).

OSHA’s rule also modified other existing OSHA standards that contain hazard classification and communication provisions to be internally consistent and aligned with the GHS modifications to the hazard communication standard. It is anticipated that the Department’s rulemaking to modify other existing standards to align with the GHS changes as required by OSHA’s rule will be done in subsequent rulemakings (See Table 2).

CR-105 RULE-MAKING ORDER (RCW 34.05.320)

Department of Labor and Industries
 Division of Occupational Safety and Health
 CR-105 Filing Date: December 18, 2012

Attachment (1)
 (Purpose Statement)

Table 1 Effective Dates:

Effective Completion Date	Requirement(s)	Who
June 1, 2014	Train employees on the new label elements and safety data sheet (SDS) format.	Employers
June 1, 2015	Compliance with all provisions of the WAC 296-901-140 final rule, except as listed below:	Chemical manufactures, importers, distributors, and employers
June 1, 2016	Update alternative workplace labeling and hazard communication program as necessary, and provide additional employee training for newly identified physical or health hazards.	Employers
December 1, 2015	The Distributor must not ship containers labeled by the chemical manufacturer or importer unless it is a GHS label.	Distributors
Transition Period to the effective completion dates noted above.	<p>May comply with the applicable requirements in the following rules:</p> <ul style="list-style-type: none"> • WAC 296-800-170, Employer Chemical Hazard Communication (core rules) • Chapter 296-307 WAC, Part Y-1, Employer Chemical Hazard Communication (agriculture) • Chapter 296-839 WAC, Content and Distribution of Material Safety Data Sheets (MSDS) and Label Information • Chapter 296-307 WAC, Part Y-2, Material Safety Data Sheets and Label Preparation (agriculture) • Chapter 296-816 WAC, Protecting Trade Secrets • Chapter 296-62 WAC, Part B-1, Trade Secrets (applies only to agriculture) <p>Or the requirements in the new Hazard Communication Standard in WAC 296-901-140, or both.</p>	Chemical manufacturers, importer, distributors, and employers.

Table 2 Proposed Schedule for Related Rule Changes

Rule Change	Proposed Schedule
Adopt WAC 296-901-140, Hazard Communication.	Adoption proposed in March 2013.
Amend language in the existing rules to include a reference to the new Hazard Communication rule in WAC 296-901-140.	Expedited proposed rules February 19, 2013.
Amend other existing DOSH rules to align with the GHS changes as required by OSHA’s rule	Second and third quarter of 2013.
Repeal existing rules and delete, repeal, and change all references to the existing rules.	As applicable, no later than June 1, 2016.

New Sections:

WAC 296-901-140 Hazard communication

- There are no requirements in this section.

WAC 296-901-14002 Purpose

- There are no requirements in this section.
- Statement that the purpose of this section is to ensure that the hazards of all chemicals produced or imported is classified, and that information concerning the classified hazards is transmitted to employers and employees.

WAC 296-901-14004 Scope and application

- Requirements relating chemical manufacturers, importers, and employers on providing employees information about the hazardous chemicals to which they are exposed, by means of a hazard communication program, labels, other forms of warning, safety data sheets, and training is located in this section. These requirements are federally driven and consistent with the provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS), Revision 3.

WAC 296-901-14006 Definitions

- There are no requirements in this section.

WAC 296-901-14008 Hazard classification

- Requirements relating to hazard classification are located in this section. These requirements are federally driven and consistent with the provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS), Revision 3.

WAC 296-901-14010 Written hazard communication program

- Requirements relating to written hazard classification are located in this section. These requirements are federally driven and consistent with the provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS), Revision 3

WAC 296-901-14012 Labels and other forms of warning

- Requirements relating to labels and other forms of warning are located in this section. These requirements are federally driven and consistent with the provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS), Revision 3.

WAC 296-901-14014 Safety data sheets

- Requirements relating to safety data sheets are located in this section. These requirements are federally driven and consistent with the provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS), Revision 3.

WAC 296-901-14016 Employee information and training

- Requirements relating to employee information and training are located in this section. These requirements are federally driven and consistent with the provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS), Revision 3.

WAC 296-901-14018 Trade secrets

- Requirements relating to trade secrets are located in this section. These requirements are federally driven and consistent with the provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS), Revision 3.

WAC 296-901-14020 Effective dates

- Requirements relating to the effective dates are located in this section. This rulemaking creates a new rule, WAC 296-901-140, incorporating all the elements of the existing Department rules into one rule to be consistent with OSHA's Hazard Communication Standard. OSHA's new standard has lengthy mandatory appendices that make it infeasible to split the rule into separate sections. During the transition period from the effective dates in the new rule, there is the option to comply with the applicable requirements in the existing rules or the requirements in the new rule or both (See Table 1). Upon completion of the transition period and the new rule is fully effective, the existing standards will be repealed (See Table 2).
- OSHA's rule also modified other existing OSHA standards that contain hazard classification and communication provisions so that they will be internally consistent and aligned with the GHS modifications to the hazard communication standard. It is anticipated that the Department's rulemaking to modify other existing standards to align with the GHS changes as required by OSHA's rule will be done in subsequent rulemakings (See Table 2).

WAC 296-901-14022 Appendix A—Health hazard criteria (Mandatory)

- Requirements relating to general classification considerations for health hazard criteria are located in this section. These requirements are federally driven and consistent with the provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS), Revision 3.

WAC 296-901-14024 Appendix B—Physical hazard criteria (Mandatory)

- Requirements relating to physical hazard criteria are located in this section. These requirements are federally driven and consistent with the provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS), Revision 3.
- This section covers the definitions and general considerations to the following: explosives; flammable gases; flammable aerosols; oxidizing gases; gases under pressure; flammable liquids; flammable solids; self-reactive chemicals; pyrophoric liquids; pyrophoric solids; self-heating chemicals; chemicals which, in contact with water, emit flammable gases; oxidizing liquids; oxidizing solids; organic peroxides; and corrosive to metals.

WAC 296-901-14026 Appendix C—Allocation of label elements (Mandatory)

- Requirements relating to allocation of label elements are located in this section. These requirements are federally driven and consistent with the provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS), Revision 3.
- All the physical illustrations of the required symbols and classes are located in this section.

WAC 296-901-14028 Appendix D—Safety data sheets (Mandatory)

- Requirements relating to the minimum information for a safety data sheets are located in this section. These requirements are federally driven and consistent with the provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS), Revision 3.

WAC 296-901-14030 Appendix E—Definition of “trade secret.” (Mandatory)

- This section provides a reprint of the “Restatement of Torts” section 757, comment b (1939) giving the definition of trade secret.

WAC 296-901-14032 Appendix F—Guidance for hazard classifications regarding carcinogenicity (Non-mandatory)

- There are no requirements in this section
- This non-mandatory Appendix provides additional guidance on hazard classification for carcinogenicity.