



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: April 30, 2019

TIME: 11:41 AM

WSR 19-10-062

Agency: Department of Labor & Industries

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 16-16-106 ; 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) Chapter 296-27 WAC Recordkeeping and Reporting (Recordkeeping and Reporting Phase 3)

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 4, 2019	8:30 a.m.	Department of Labor & Industries Room S119 7273 Linderson Way SW Tumwater, WA 98501	

Date of intended adoption: August 20, 2019 (Note: This is NOT the effective date)

Submit written comments to:

Name: Tari Enos; Administrative Regulations Analyst

Address: PO Box 44620 Olympia, WA 98504

Email: tari.enos@Lni.wa.gov

Fax: 360-902-5619

Other:

By (date) June 11, 2019

Assistance for persons with disabilities:

Contact Tari Enos

Phone: 360-902-5541

Fax: 360-902-5619

TTY:

Email: tari.enos@Lni.wa.gov

Other:

By (date) May 21, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Department of Labor & Industries (L&I) is proposing to update certain sections of Chapter 296-27 WAC, Recordkeeping and Reporting, to make sure we are at least as effective as the Occupational Safety and Health Administration (OSHA). Over the past few years, Federal OSHA has made multiple updates, the latest changes occurring in January 2019. OSHA's multiple rulemaking projects impacted these specific sections:

- 29 CFR 1904.35 Employee Involvement. (WAC 296-27-02111)
- 29 CFR 1904.36 Prohibition against discrimination. (WAC 296-27-02113)
- 29 CFR 1904.40 Providing records to government representatives. (WAC 296-27-03101)
- 29 CFR 1904.41 Annual Electronic Submission of occupational injury and illness records; which now applies to all state plan states. (WAC 296-27-03103)

One of the most significant changes Federal OSHA made was to now require all establishments/employers operating in state plan states (and who meet the specified criteria) to comply with the annual electronic records submission requirements. Other housekeeping amendments are also being proposed in this chapter. Please see below for the proposed changes:

AMENDED SECTIONS

WAC 296-27-01103 through WAC 296-27-03101.

- Housekeeping changes through the chapter that do not change the effect of the rule. These changes include updating “you”, “you are” or “you have” to “the employer”, “the employer is” or “the employer has” where applicable for consistency purposes across all WACs, as well as clarification for users of this chapter.

WAC 296-27-01101 Recording criteria.

- The proposal corrects an inadvertent error from past rulemaking that references recordkeeping criteria under WAC 296-27-01109 through 296-27-01115 for specific cases related to needlestick and sharps injuries, medical removal cases, occupational hearing loss cases, and work-related tuberculous cases. The proposed rule updates the reference to “musculoskeletal disorder” with the correct reference to “tuberculosis” in subsection (2).

WAC 296-27-02111 Employee involvement.

- Revises the existing requirement that employers establish procedures for employees to report occupational injuries and illness, to clarify that these procedures must be “reasonable” and not deter or discourage reporting.
- Requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation.
- Incorporates the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses
- Updates existing language to clarify the rights of employees and their representatives to access the injury and illness records.

WAC 296-27-02113 Prohibition against discrimination.

- Update the existing language to clarify that the WISH Act, prohibits employers from discriminating against an employee for reporting a work-related fatality, injury or illness, as well as protects the employee who files a safety and health complaint, or asks for access to the chapter 296-27 WAC records, or otherwise exercises any rights afforded under the WISH Act.

WAC 296-27-03103 Annual OSHA injury and illness survey.

- Update title of this WAC section to “Electronic submission of injury and illness records to OSHA.”
- Add new note at the beginning of the section that reads: Note: The information required by this section is reported and tracked by OSHA for their own injury and illness data analysis. DOSH is not notified when employers submit this information to OSHA.
- Updates existing requirements requiring certain employers to submit injury and illness data to OSHA to address electronic submission. Remove all original language from this section and replace it with new language from OSHA, in a new format, outlining the requirements of electronic submission. The latest OSHA updates from January 2019 are represented in our updates. The new language will be at least as effective as OSHA.

NEW SECTIONS

WAC 296-27-001 Definitions

- Move the definitions section from the end of the chapter to the beginning for clarification purposes, as well as to align with the changes being made for the eRules rulemaking project.

WAC 296-27-071 Appendix B Annual Electronic Submission of OSHA Form 300A; Table 3: Designated Industries.

- Add an OSHA identical table to this new section. Please see the proposed language for Table 3.

REPEALED SECTIONS

WAC 296-27-051 Definitions

WAC 296-27-05101 Definitions

Reasons supporting proposal: The reasons supporting the proposal of updating the current recordkeeping and reporting rules is to ensure the Department of Labor & Industries (L&I) is at least as effective as the Occupational Safety and Health Administration (OSHA).

Statutory authority for adoption: RCW 49.17.010, 49.17.040, and 49.17.050

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 1904.35

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

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:	Anne Soiza	Tumwater, WA	360-902-5090
Enforcement:	Anne Soiza	Tumwater, WA	360-902-5090

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: According to RCW 34.05.328(5)(b)(iii) and RCW 34.05.328(5)(b)(iv), no cost benefit analysis is required for this rulemaking.

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: 29 CFR 1904.35, Employee Involvement. If L&I doesn't adopt the new regulations, we would not be as effective as federal OSHA.

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)(e) (Dictated by statute)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- 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:

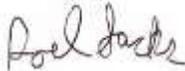
COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

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: April 30, 2019	Signature: 
Name: Joel Sacks	
Title: Director	