



# PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

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FILED

DATE: June 18, 2019

TIME: 9:58 AM

WSR 19-13-082

**Agency:** Department of Labor & Industries

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR** 16-23-142 ; 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 296-307 WAC, Safety Standards for Agriculture, Part I Pesticides, Worker Protection Standard.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
August 20, 2019	1:00 p.m.	Department of Labor & Industries 7273 Linderson Way SW Tumwater, WA 98501	
August 21, 2019	9:00 a.m.	Department of Labor & Industries 525 E. College Way, Suite H Mount Vernon, WA 98273	
August 22, 2019	9:00 a.m.	Department of Labor & Industries 3001 W. Broadway Ave Moses Lake, WA 98837	
August 23, 2019	9:00 a.m.	Department of Labor & Industries 15 W Yakima Ave, Suite 100 Yakima, WA 98902	

**Date of intended adoption:** October 22, 2019 (Note: This is **NOT** the effective date)

**Submit written comments to:**

Name: Josefina Magana

Address: P.O. Box 44620, Olympia, WA 98504-4620

Email: josefina.magana@Lni.wa.gov

Fax: (360) 902-5619

Other:

By (date) August 30, 2019

**Assistance for persons with disabilities:**

Contact Josefina Magana

Phone: (360) 902-4233

Fax: (360) 902-5619

TTY:

Email: josefina.magana@Lni.wa.gov

Other:

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Environmental Protection Agency (EPA) has issued new requirements for agricultural employers and handler employers in the Worker Protection Standard (WPS), 40 CFR Part 170. EPA standards are designed to reduce the risks of illness or injury resulting from workers' and handlers' occupational exposures to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses, and forests and also from the accidental exposure of workers and other persons to such pesticides. It requires workplace practices designed to reduce or eliminate exposure to pesticides and establishes procedures for responding to exposure-related emergencies.

RCW 49.17.280 directs the department to adopt rules at least as effective as the federal EPA worker protection standard. As such, the Division of Occupational Safety and Health (DOSH) is updating its Worker Protection Standard (WPS), chapter 296-307 WAC, Part I (WAC 296-307-107 through 296-307-13055) of chapter 296-307 WAC Safety Standards for Agriculture. This proposal aligns the structure of the current worker protection standard with the structure in the updated federal EPA worker protection standard.

The Washington State Department of Labor and Industries (L&I) and the Department of Agriculture (WSDA), as required, have been coordinating adoption of the standards to protect workers from pesticides. The goal is to ensure consistency between these departments in rule implementation and enforcement and to avoid conflict in interpretation and application of the rules.

DOSH rules are identical to the federal WPS and the WSDA WPS except in the following areas which are more protective:

- Definition of immediate family
- Cartridge change out schedule
- Enclosed cab respirator
- Use of most protective personal protective equipment
- Eyewashes must provide 0.4 gallons or 1.5 liters per minute for 15 minutes with single point of operation
- Heat stress requirements retained

This rule was reorganized in order to update requirements from EPA, although the following sections are new, requirements were moved from current WPS sections as indicated.

**A summary of the proposed amendments follows:**

**NEW SECTIONS**

**WAC 296-307-108 General Provisions.**

**WAC 296-307-10805 Federal worker protection standards – Washington state department of labor and industries.**

- The proposed rule maintains current worker protections and aligns with federal Environmental Protection Agency and Washington State Department of Agriculture rules.

**WAC 296-307-10810 Scope and purpose—40 C.F.R., Sec. 170.301.**

- The proposed rule maintains current worker protections and aligns with federal Environmental Protection Agency and Washington State Department of Agriculture rules.

**WAC 296-307-10815 Applicability—40 C.F.R., Sec. 170.303.**

- This section applies when pesticide product is used in the production of agricultural plants on an agricultural establishment.
- This section does not apply where the worker protection standard provides exceptions to label required personal protective equipment and restricted-entry intervals.

**WAC 296-307-10820 Definitions—40 C.F.R., Sec. 170.305.**

- This section defines terms used in the WPS rules under chapter 296-307, WAC Part I. New definitions added are: application exclusion zone, commercial pesticide handler employer, designated representative, employ, enclosed space production, labor contractor, safety data sheet, outdoor production, worker housing area. Clarified definitions are: agricultural emergency, closed system, enclosed cab, hand labor, handler, and handler employer, personal protective equipment. Removed definitions are: animal premise, greenhouse, nursery, substantial economic loss.
- The term "use" was moved from current WAC 296-307-11015 to this section.
- Personal protective equipment definition was moved from current WAC 296-307-13045 to this section.

**WAC 296-307-10825 Agricultural employer duties—40 C.F.R., Sec. 170.309.**

- This section requires agricultural employers to provide safety information, including the labor contractors who supervise any workers or handlers, to make sure they receive protections of this part and can comply with it.
- Move requirements from WAC 296-307-11010 to this section and add the following, as required by EPA.
  - Handlers and early entry workers must be 18 years old.
- Move antidote requirement from WAC 296-307-12055.

**WAC 296-307-10830 Display requirements for pesticide safety information and pesticide application and hazard information—40 C.F.R., Sec. 170.311.**

- This section requires agricultural employers to display safety information in a manner that workers and handlers can understand.
- Move requirements from WAC 296-307-12045 to this section.
- Add a note indicating that "using a phone" could be a route of exposure.

**WAC 296-307-10835 Commercial pesticide handler employer duties—40 C.F.R., Sec. 170.313.**

- This section requires that the commercial pesticide handler employer ensures handlers receive protections of this part and can comply with it.
- Move antidote requirement from WAC 296-307-12055.
- Move requirements from WAC 296-307-12035.
- Add requirements to ensure pesticides are used consistent with pesticide product labeling and requirements of this part.
- Add requirement indicating handlers must be at least 18 years old.
- Add requirement indicating commercial pesticide handler employer instructs handlers on safe operation of equipment used for mixing, loading, transferring, or applying pesticide.
- Add requirement indicating that when the handler employed by a commercial pesticide handling establishment will be in agricultural establishment they are provided information about specific locations and descriptions of treated areas with restricted entry intervals.
- Add requirement indicating commercial pesticide handler employer must provide the agricultural employer all of the following information before application of any pesticide:
  - Use restrictions or directions on the pesticide product labeling that must be followed for protection of workers, handlers, or other persons.
  - Updates on changes of scheduled application time.
- Add requirement indicating commercial pesticide handler employer must provide emergency assistance after learning of possible poison.
- Add a requirement that persons do not clean or repair pesticide equipment, unless trained as a handler.
- Add requirement to provide records when requested by an employee of EPA or any authorized representative of the Washington State Department of Agriculture or the Department of Labor and Industries.

**WAC 296-307-10840 Prohibited actions—40 C.F.R., Sec. 170.315.**

- This section prohibits the agricultural employer from intimidating, threatening, coercing, or discriminating against any worker or handler for complying with worker protection standards.
- Move all requirements from WAC 296-307-11010 to this section.

**WAC 296-307-10845 Violations of this part—40 C.F.R., Sec. 170.317.**

- This section prohibits the unlawful use of pesticides contrary to label directions.
- Move all requirements from WAC 296-307-11015 to this section.

**WAC 296-307-109 Requirements for protection of agricultural workers.**

**WAC 296-307-10905 Training requirements for workers—40 C.F.R., Sec. 170.401.**

- This section requires the agricultural employer to train workers every year as opposed to every five years. Additionally, the training program content has been increased.
- Move requirements from WAC 296-307-12040 to this section. Additionally the following requirements are added:
  - Potential hazards of pesticides to children and pregnant women
  - Keep children and family members away from pesticide-treated areas
  - After working in pesticide-treated areas, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members
  - How to report suspected pesticide use violations
  - Pesticide applications must be suspended application if a worker or other person is in the application exclusion zone.
- Add requirements for training facilities, trainers and training materials which must be approved by the EPA.
- Add that workers must be at least 18 before performing early-entry activities and that children and other family members be kept away from pesticide treated areas.

**WAC 296-307-10910 Establishment-specific information for workers—40 C.F.R., Sec. 170.403.**

- This section requires the agricultural employer to inform workers of the following prior to performing activities in any treated area:
  - The location of pesticide safety information.
  - The location of pesticide application and hazard information.
  - The location of decontamination supplies.
- Move requirements from WAC 296-307-12030 to this section.

**WAC 296-307-10915 Entry restrictions associated with pesticide applications—40 C.F.R., Sec. 170.405.**

- This section requires that the agricultural employer not allow or direct any worker or other person, other than appropriately trained, to enter or remain in treated area or an application exclusion zone until application is complete.
- Move requirements from WAC 296-307-12015 to this section.
- Add a requirement about the employer not allowing or directing any worker or other person to remain or enter in the treated area or application exclusion zone that is within the boundaries of the establishment.
- Add table 1 which has a summary of outdoor production application exclusion zones (AEZ).

- Update table 2, which has a summary of enclosed space production pesticide application.

**WAC 296-307-10920 Worker entry restrictions after pesticide applications—40 C.F.R., Sec. 170.407.**

- This section requires that the agricultural employer not allow workers to enter treated areas before a restricted- entry interval has expired or warning signs have been removed or covered.
- Move requirements from WAC 296-307-12020 to this section.

**WAC 296-307-10925 Oral and posted notification of worker entry restrictions—40 C.F.R., Sec. 170.409.**

- This section requires the agricultural employer to notify workers of all entry restrictions required by WAC 296-307-10915 and WAC 296-307-10920.
- Move requirements from WAC 296-307-12025 to this section. Provides for more specific requirements than in current WPS. Notification changes include an REI-specific notice action that does not exist in current WPS.

**WAC 296-307-10930 Decontamination supplies for workers—40 C.F.R., Sec. 170.411.**

- This section requires that the agricultural employer provide decontamination supplies to workers performing activities where a pesticide is applied.
- Move requirements from WAC 296-307-12050 to this section. This includes:
  - Current requirement regarding decontamination after early entry.

**WAC 296-307-112 Requirements for protection of agricultural pesticide handlers.**

**WAC 296-307-11205 Training requirements for handlers—40 C.F.R., Sec. 170.501.**

- This section requires that the handler employer ensures the handler has been trained in accordance with this section and within the last twelve months.
- Move requirements from WAC 296-307-13025 to this section. Training cards requirement is removed.
- Add requirements for training facilities, trainers and training materials which must be approved by the EPA.
- Add requirement about the trainer indicating they must meet one of the following:
  - Designated as a trainer of certified applicators or pesticide handlers.
  - Have completed a pesticide safety train-the-trainer program approved by a state, federal, or tribal agency.
  - Be currently certified as an applicator of restricted use pesticide.
  - The record must include:
    - The trained handlers printed name and signature.
    - The date of training.
    - Information identifying EPA-approved materials were used.
    - The trainers name and documentation showing that the trainer met requirements of training.
    - The handler employers name.
- Add requirements that employers must provide the handler a copy of training information if requested, and that training records must be kept for seven years for each handler.
- Add note from current WAC 296-307-13025 indicating employees be trained in accordance with chapter 296-901 WAC, Globally harmonized system for hazard communication.

**WAC 296-307-11210 Knowledge of labeling, application-specific, and establishment-specific information for handlers.**

- This section requires that the handler employer ensure the handler reads the portions of the label applicable to the safe use of the pesticides before doing handling activities.
- Move requirements from WAC 296-307-13030 to this section.

**WAC 296-307-11215 Requirements during applications to protect handlers, workers, and other persons—40 C.F.R., Sec. 170.505.**

- This section requires that the handler employer ensures that no pesticide is applied so as to contact directly or through drift, any worker or other person.
- Move requirements from WAC 296-307-13010 to this section.
- Add new requirement indicating that the handler must suspend application if any worker or other person is in the application exclusion zone.

**WAC 296-307-11220 Personal protective equipment—40 C.F.R., Sec. 170.507.**

- This section highlights the responsibilities of the employer regarding personal protective equipment.
- Move requirements from WAC 296-307-13045 to this section. Specifically leave current WPS requirement regarding two pesticides being applied.
  - If two pesticides are being applied that have different PPE requirements, the employer must provide and ensure the handler or worker uses the most protective PPE or PPE that will protect against both pesticides.
- Add chemical resistant category table for clarification in order to make it clearer for employers to comply.

**WAC 296-307-11225 Decontamination and eye flushing supplies for handlers—40 C.F.R., Sec. 170.509.**

- This section requires that the handler employer provide decontamination and eye flushing supplies in accordance with this section for any handler.
- Move requirements from WAC 296-307-13010 to this section. Keep requirement regarding cartridge replacement to take place at end of shift.
- Keep requirement indicating that when a handler is mixing or loading a pesticide product whose labeling requires protective eyewear, the handler employer must provide, at each mixing and loading station, one plummeted or portable eye wash system that can deliver running water at a rate of at least .4 gallons per minute for at least fifteen minutes.

**WAC 296-307-114 Exemptions, Exceptions and Equivalency—40 C.F.R., Sec. 170.601.**

**WAC 296-307-11405 Exemptions.**

- This section highlights exceptions for owners of agricultural establishments.
- Move requirements from WAC 296-307-12010 to this section.
- Add a requirement that certified crop advisors may make their own determination for the appropriate PPE for entry into treated area.

**WAC 296-307-11410 Exceptions for entry by workers during restricted-entry intervals—40 C.F.R., Sec. 170.603.**

- This section highlights exceptions to entry by workers during restricted-entry intervals.
- Move requirements from WAC 296-307-12020 to this section.
- Consolidated Agricultural emergency language to maintain current protections.

**WAC 296-307-11410 Exceptions for entry by workers during restricted-entry intervals—40 C.F.R., Sec. 170.603.**

- This section highlights exceptions to entry by workers during restricted-entry intervals.
- Move requirements from WAC 296-307-12020 to this section.

**WAC 296-307-11415 Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval—40 C.F.R., Sec. 170.605.**

- This section requires agricultural employer to provide information regarding entry during restricted entry interval.
- Move requirements from WAC 296-307-12020 to this section. Keep heat related illness language.

**WAC 296-307-11420 Exceptions to personal protective equipment requirements specified on pesticide product labeling—40 C.F.R., Sec. 170.607.**

- This section highlights exceptions to personal protective equipment.
- Move requirements from WAC 296-307-13045 to this section.
- Incorporate aspects of the current enclosed cab language to allow for good hygiene practices and not lower protections.

**REPEALED SECTIONS**

**WAC 296-307-110 Scope and purpose.**

- Repeal this section and move to WAC 296-307-10810.

**WAC 296-307-11005 Definitions.**

- Repeal this section and move to WAC 296-307-10820.

**WAC 296-307-11010 General duties and prohibited actions.**

- Repeal this section and move requirements to WAC 296-307-10825.

**WAC 296-307-11015 Violations of this part.**

- Repeal this section and move requirements to WAC 296-307-10835.

**WAC 296-307-120 Applicability of this section.**

- Repeal this section and move requirements to WAC 296-307-10815.

**WAC 296-307-12005 Exceptions.**

- Repeal this section and move requirements to WAC 296-307-11410.

**WAC 296-307-12010 Exemptions.**

- Repeal this section and move requirements to WAC 296-307-11405.

**WAC 296-307-12015 Restrictions associated with pesticide applications.**

- Repeal this section and move requirements to WAC 296-307-10915

**WAC 296-307-12020 Entry restrictions.**

- Repeal this section and move requirements to WAC 296-307-10920.

**WAC 296-307-12025 Notice of applications.**

- Repeal this section and move requirements to WAC 296-307-10925.

**WAC 296-307-12030 Providing specific information about applications.**

- Repeal this section and move requirements to WAC 296-307-10830.

**WAC 296-307-12035 Notice of applications to handler employers.**

- Repeal this section and move requirements to WAC 296-307-11210.

**WAC 296-307-12040 Pesticide safety training.**

- Repeal this section and move requirements to WAC 296-307-10905.

**WAC 296-307-12045 Posted pesticide safety information.**

- Repeal this section and move requirements to WAC 296-307-10830.

**WAC 296-307-12050 Decontamination.**

- Repeal this section and move requirements to WAC 296-307-10930.

**WAC 296-307-12055 Emergency assistance.**

- Repeal this section and move requirements to WAC 296-307-10825.

**WAC 296-307-130 Applicability of this section—Standards for pesticide handlers.**

- Repeal this section and move requirements to WAC 296-307-10815.

**WAC 296-307-13010 Restrictions during applications.**

- Repeal this section and move requirements to WAC 296-307-10915.

**WAC 296-307-13015 Providing specific information about applications.**

- Repeal this section and move requirements to WAC 296-307-10905.
- WAC 296-307-13020 Notice of applications to agricultural employers.**
- Repeal this section and move requirements to WAC 296-307-11415.
- WAC 296-307-13025 Pesticide safety training.**
- Repeal this section and move requirements to WAC 296-307-11205.
- WAC 296-307-13030 Knowledge of labeling and site-specific information.**
- Repeal this section and move requirements to WAC 296-307-11210.
- WAC 296-307-13035 Safe operation of equipment.**
- Repeal this section and move requirements to WAC 296-307-11415.
- WAC 296-307-13040 Posted pesticide safety information.**
- Repeal this section and move requirements to WAC 296-307-10830.
- WAC 296-307-13045 Personal protective equipment.**
- Repeal this section and move requirements to WAC 296-307-11220.
- WAC 296-307-13050 Decontamination.**
- Repeal this section and move requirements to WAC 296-307-10930.
- WAC 296-307-13055 Emergency assistance.**
- Repeal this section and move requirements to WAC 296-307-10825.

**Reasons supporting proposal:** Under RCW 49.17.280, DOSH is required to update our rules to be at least as effective as the federal EPA worker protection standard. The federal EPA worker protection standards are designed to reduce the risks of illness or injury resulting from workers' and handlers' occupational exposures to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses, and forests and also from the accidental exposure of workers and other persons to such pesticides.

**Statutory authority for adoption:** RCW 49.17.040, RCW 49.17.050, RCW 49.17.280

**Statute being implemented:** Chapter 49.17 RCW

**Is rule necessary because of a:**

Federal Law?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION: 40 C.F.R Part 170

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

**Name of proponent:** (person or organization) Department of Labor & Industries

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> 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: This rulemaking is exempted under RCW 34.05.328(5)(b)(iii) from the requirement for a cost benefit analysis. The proposed rules are adopting or incorporating by reference without material change federal statutes or regulatory changes.

**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:

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:

- |   |  |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations)         | <input type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)   |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)  | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>((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:** June 18, 2019

**Signature:**

**Name:** Joel Sacks



**Title:** Director