



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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DATE: June 21, 2023

TIME: 10:57 AM

WSR 23-13-127

Agency: Department of Labor & Industries (L&I)

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 17-17-134 ; 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 296-67 WAC Safety standards for process safety management of highly hazardous chemicals

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
August 10, 2023	10:00 a.m.	Four Points Sheraton Fairhaven Room 714 Lakeway Drive Bellingham, WA 98229	A pre-hearing overview will occur one hour prior to the start of each public hearing. The hearings will begin at the indicated times and will continue until all oral comments are received.
August 15, 2023	1:30 p.m.	Virtual and telephonic hearing To join electronically: https://lni-wa.gov.zoom.us/j/87947049101?pwd=ejNaTy9VMWp4Qk9wR0lvc2xKS1R0UT09 Password (if prompted): PSM@1230 To join by phone (audio only): 253-215-8782 or 253-205-0468 Meeting ID: 879 4704 9101 Passcode: 43800387	
August 17, 2023	10:00 a.m.	Four Points Sheraton Fairhaven Room 714 Lakeway Drive Bellingham, WA 98229	

Date of intended adoption: October 17, 2023 (Note: This is **NOT** the effective date)

<p>Submit written comments to:</p> <p>Name: Tari Enos Address: Department of Labor & Industries Division of Occupational Safety & Health (DOSH) PO Box 44620 Olympia, WA 98504-4620 Email: Tari.Enos@Lni.wa.gov Fax: 360-902-5619 Other: By (date) <u>August 24, 2023, by 5:00 p.m.</u></p>	<p>Assistance for persons with disabilities:</p> <p>Contact <u>Tari Enos</u> Phone: 360-902-5541 Fax: 360-902-5619 TTY: Email: Tari.Enos@Lni.wa.gov Other: By (date) <u>July 27, 2023</u></p>
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Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Department of Labor & Industries (L&I) is proposing adding a new Part B to chapter 296-67 WAC, Safety standards for process safety management of highly hazardous chemicals, which pertains specifically to process safety management (PSM) in petroleum refineries. The new Part B includes existing PSM requirements applicable to refineries updated with new requirements based on the best available evidence learned since the PSM rule was first adopted in 1992. Please see below for an overview of the new chapter 296-67 WAC, Part B.

Amended Section:

WAC 296-67-001 Process safety management of highly hazardous chemicals

- Updates the purpose and scope section of the current rule to identify WAC 296-67-001 through 296-67-293 as Part A of the chapter 296-67 WAC.
- Adds an exemption from Part A for petroleum refineries under Part B.

New Sections:

WAC 296-67-300 Purpose and scope – Part B

- This section identifies WAC 296-67-300 through 296-67-387 as Part B of chapter 296-67 WAC that applies to petroleum refineries.
- Clarifies that Part B supersedes Part A of this chapter as it relates to petroleum refineries.

WAC 296-67-307 Definitions

- Includes definitions for the following: Affected person, Change, Damage mechanism, Decontamination, Employee representative, Facility, Feasible, Flammable gas, Flammable liquid, Hierarchy of hazard controls, Highly hazardous chemical or material, Hot work, Human factors, Independent protection layers (IPLs), Inherent safety, Initiating cause, Isolate, Lagging indicators, Leading indicators, Major change, Must, Nonroutine, Process, Process equipment, Process safety culture, Process safety hazard, Process safety incident, Process safety management (PSM), Process safety performance indicators, Qualified operator, Reactive substance, Recognized and generally accepted good engineering practices (RAGAGEP), Replacement-in-kind, Safeguard, Safety instrumented system, Temporary pipe or equipment repair, Toxic substance, Turnaround, and Utility.

WAC 296-67-311 Process safety management program

- Outlines the requirements employers must follow to develop and maintain an effective written process safety management program that needs to be reviewed and updated at least once every three years.

WAC 296-67-315 Employee collaboration

- Outlines the requirements employers must follow to develop and maintain a written plan to provide for employee collaboration throughout all PSM phases.

WAC 296-67-319 Process safety information

- Outlines the requirements employers must follow to develop and maintain a compilation of written process safety information before performing any PSM phase.

WAC 296-67-323 Hazard analyses

- Outlines the requirements employers must follow in order to document an effective process hazard analysis to identify and control hazards associated with each process.

WAC 296-67-327 Operating procedures

- Outlines the requirements employers must follow to develop and maintain written operating procedures. This includes minimum standards, steps of each operating phase or mode or operation, operating limits, safety and health considerations and safety systems.

WAC 296-27-331 Training

- Outlines requirements that each affected employee must be trained in an overview of the process and in applicable operating procedures, as well as being trained in an overview of the process in the hazards and safe work practices related to the process. Includes which training materials are applicable to the employee's job tasks.

WAC 296-67-335 Contractors

- Outlines requirements regarding refinery employer responsibilities when selecting a contractor. They must evaluate the contract employer's safety performance, require any contractor to use a skilled and trained workforce and must ensure the contractor informs their employees of potential process safety hazards, as well as applicable safety rules and applicable provisions of this chapter.
- Outlines requirements that the refinery employers must develop and maintain effective written procedures, periodically evaluate the performance of contractors and document that the requirements of this section are being

completed by the contractor. The refinery employer must also ensure a copy of the contractor's injury and illness log is available to DOSH upon request.

- Sets requirements that are the contractor's responsibility, including that a contractor must inform its employees of applicable refinery safety rules.

WAC 296-67-339 Pre-startup safety review

- Outlines requirements that the employer must perform a pre-startup safety review (PSSR) for new or modified processes, for partial or unplanned shutdowns/outages and for all turnaround work performed on a process.
- Outlines requirements that a PSSR must contain all of the requirements prior to the introduction of highly hazardous chemicals or materials to a process.
- Outlines requirements that the employer must ensure experienced operating or maintenance employees that are affected by a change are included in the PSSR, and an operating employee currently working in the process must be designated as the employee representative.

WAC 296-67-343 Mechanical integrity

- Outlines requirements that employers must ensure the mechanical integrity of process equipment by developing and maintaining effective written procedures, which must provide clear instructions for safely performing maintenance on process equipment. These documents developed under this section must be readily accessible to employees and employee representatives.

WAC 296-67-347 Damage mechanism review

- Outlines requirements that the employer must perform a damage mechanism review (DMR) for each new and existing process, as well as determine the priority order for performing DMRs. These DMRs must be revalidated every five years, and if a major change occurs on a process that a DMR exists, it must be reviewed before the change is approved. The employer must retain all DMR reports for the life of the process.

WAC 296-67-351 Hot work

- Outlines requirements that the employer must develop and maintain effective written procedures for the issuance of hot work permits, and the permit must be issued prior to the commencement of operations. The employer must also keep hot work permits on file for one year.

WAC 296-67-355 Management of change

- Outlines requirements that a written management of change (MOC) must be developed and maintained by the employer to assess and manage change of process chemicals, technology, procedures, process equipment, and facilities. Qualified personnel and appropriate methods for all MOCs must be used by the employer based on hazard, complexity and type of change. If any change that is covered in this section changes the process safety information (PSI), information must be amended timely prior to implementation of the change.

WAC 296-67-359 Management of organizational change

- Outlines that a team must be designated by the employer to perform a management of organizational change (MOOC) assessment prior to reducing staffing levels. The MOOC is needed for changes with a duration exceeding ninety calendar days affecting operations. A description of the change must be included in the written MOOC assessment, factors evaluated by the team, and the team's findings and recommendations.

WAC 296-67-363 Incident investigation – Root cause analysis

- Outlines the written procedures that the employer must develop to investigate any incident that could end in a safety incident, and how to report on it promptly. The employer must also initiate the investigation no later than forty-eight hours after the incident occurs, and that the report must also include a method for performing a root cause analysis.

WAC 296-67-367 Emergency planning and response

- Outlines that the employer must develop and maintain an effective emergency response plan for the entire plant in accordance with WAC 296-24-567 Employee emergency plans and fire prevention plans and also chapter 296-824 WAC, Emergency response.
- Outlines that if the incident exceeds the capability of the internal emergency response team, the written plan must detail how an emergency response would be executed.
- Outlines that the employer must document any agreement with external emergency response teams that are expected to assist in an emergency.

WAC 296-67-371 Compliance audits

- Outlines that the employer must perform an effective compliance audit every three years and must prepare a written report documenting the findings of the audit. The employer must consult with a person who has expertise and experience from each process audited and document the findings and recommendations from the consultations in the written report.

- Outlines that the employer must make the report available to employees and employee representatives, and if any written comments regarding the report are received by employees, the employer must respond in writing within 60 days. The employer must also keep the three most recent compliance audit reports.

WAC 296-67-375 Process safety culture assessment

- Outlines that the employer must develop and maintain an effective process safety culture assessment (PSCA) program, and that within eighteen months following the effective date of Part B of this chapter and at least every five years thereafter, the employer must perform an effective PSCA. A team with at least one person knowledgeable with refinery operations must develop and implement a PSCA, and the team must consult with at least one other individual with expertise assessing process safety culture.
- Outlines that the employer must prioritize recommendations and implement corrective actions, with the assistance of the PSCA team, within 24 months of completing the written report. The PSCA team must perform a written assessment of the implementation and effectiveness of each corrective action within three years of completing the PSCA report. If it is found that the corrective action is ineffective, the employer must implement changes.
- Outlines that PSCA reports and corrective action plans must be made available to all affected employees within 60 calendar days of completion. Any participating contractors must provide PSCA reports and corrective action plans to their employees and employee representatives within 14 days of receipt.

WAC 296-67-379 Human factors

- Outlines that within 18 months of the effective date of Part B of this chapter, the employer must develop and maintain an effective written human factors program. The employer must also include a written analysis of human factors which must contain a description of the selected methodologies and criteria for their use.
- Outlines that the employer must assess human factors in existing procedures and revise them accordingly. 50 percent of assessments and revisions must be completed by the employer within three years of the effective date of Part B of this chapter, and 100 percent within five years.
- Outlines that the employer must include an assessment of human factors in new and revised procedures, and the employer must train affected operating and maintenance employees in the written human factors program. Also, upon request, the employer must make a copy of the written human factors report available to affected employees.

WAC 296-67-383 Corrective action program

- Outlines that the employer must develop and maintain an effective written corrective action program that includes all of the process methods included in this section. The team performing the analysis must provide all findings and recommendations to the employer. The employer may reject the team's recommendation if the employer can demonstrate in writing that the recommendation meets the certain criteria.
- Outlines that if the employer can demonstrate in writing that an alternative method would provide an equivalent or higher order of safety, the employer may change the team's recommendation. When a recommendation is rejected or changed, it must be communicated to on-site and off-site team members for comment. All comments received regarding a changed or rejected recommendation must be documented.
- Outlines that the employer must complete all corrective actions and comply with all completion dates required by this section. All completion dates must be available upon request to any affected employees and employee representatives.
- Outlines, with a couple of exceptions, any corrective action that does not require a process shut down, must be completed within 30 months after the analysis or review are completed unless an employer demonstrates in writing that this isn't feasible.
- Outlines that within 18 months of the audit being completed, each corrective action from the compliance audit must be completed, unless the employer demonstrates in writing that it isn't feasible. Within 18 months of the investigation being completed, the corrective action of the incident investigation must be completed, unless the employer demonstrates in writing that it isn't feasible.
- Outlines that if a corrective action cannot be implemented within the required time limits of this section, the employer must ensure interim safeguards are sufficient in ensuring employee safety and health. The employer must document the decision and include all information required in the rule.

WAC 296-67-387 Trade secrets

- Outlines that employers must ensure all information needed to comply with Part B of this chapter is available, pursuant to WAC 296-901-14018, Trade secrets.
- Outlines that nothing in this section precludes the employer from requiring the people to whom the information is made available under this section to enter into confidentiality agreements not to disclose the information.

Reasons supporting proposal: In 1992, L&I adopted OSHA's PSM standard to prevent or minimize the consequences of catastrophic releases of toxic, reactive, flammable or explosive chemicals, referred to as highly hazardous chemicals. These releases may result in toxic, fire or explosion hazards. PSM is a system for managing the use of highly hazardous chemicals during plant processes and activities to prevent risk of unintentional releases. The unexpected release of highly hazardous chemicals can be deadly, leaving profound and lasting impacts on families, businesses and communities. The potential for

such releases exists any time toxic, reactive, flammable, or explosive chemicals are not properly controlled. The current PSM rule applies to employers in industries who have processes that involve certain threshold quantities of highly hazardous chemicals. Petroleum refineries are one industry covered under the current PSM rules.

Catastrophic events at petroleum refineries across the U.S. have tragically claimed the lives of many workers, including 13 in Washington state since 1998. In 1998, six workers in Washington state died from an incident related to PSM at the then Equilon refinery in Anacortes, and in 2010, seven more workers died at the then Tesoro petroleum refinery in Anacortes. These tragedies have led to significant discussion about what could have been done to prevent them.

The current rule, as applied to refineries, is outdated, not having been updated in over 20 years and do not reflect current industry practices.

In 2019, California adopted new rules for PSM specific for refineries based on recommendations from an interagency taskforce and other safety experts following a chemical release and fire at a California refinery in 2012. L&I reviewed the best available evidence, including but not limited to, the recommendations from the Chemical Safety Board's investigation of the 2010 Tesoro Explosion, the California rule, the California interagency report, information from federal OSHA and the EPA on PSM modernization efforts, information from California OSHA on implementation of the new PSM refinery rule, as well as inspection information from L&I and OSHA. L&I worked with Washington refineries, labor organizations and advocates, community and environmental advocates, and other stakeholders to develop the proposed rule for PSM in petroleum refineries. The proposed rule largely aligns with the California rule. These changes, incorporating the best available evidence to prevent catastrophic releases, are needed to ensure that employers and employees are safe while working in the refineries as processes and technology in the industry advance over time.

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?	<input type="checkbox"/> Yes	<input checked="" 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:

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

Type of proponent: Private Public Governmental

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

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting: Program Manager	Tracy West, Acting Standards	Tumwater, WA	360-902-6954
Implementation:	Craig Blackwood	Tumwater, WA	360-902-5828
Enforcement:	Craig Blackwood	Tumwater, WA	360-902-5828

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: Tari Enos

Address: PO Box 44620

Olympia, WA 98504-4620

Phone: 360-902-5541

Fax: 360-902-5619

TTY:

Email: Tari.Enos@Lni.wa.gov

Other:

No: Please explain:

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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:

[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 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule: All new requirements under this proposed rule apply to petroleum refineries. There are some requirements that are the responsibility of contractors, who may include small businesses, however, those are existing requirements under chapter 296-67 WAC.

(2) Scope of exemptions: *Check one.*

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact 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 21, 2023

Name: Joel Sacks

Title: Director

Signature:

