



PROPOSED RULE MAKING

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

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STATE OF WASHINGTON
FILED

DATE: March 05, 2024

TIME: 3:33 PM

WSR 24-06-081

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

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 23-21-059 ; 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) Safety standards for quotas at warehouse distribution centers. Chapter 296-35 WAC, new chapter under Title 296 WAC, Department of Labor and Industries; and chapter 296-360 WAC, Discrimination, pursuant to RCW 49.17.160.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
April 9, 2024	9:30 a.m.	Enduris Training Center 1610 Technology Blvd. Suite 100 Spokane WA 99224	A pre-hearing overview will begin at 9:00 a.m. The hearing will start at 9:30 a.m. and will continue until all oral comments are received. This public hearing will be held jointly with L&I's Division of Fraud Prevention and Labor Standards.
April 11, 2024	6:00 p.m.	Virtual and telephonic hearing To join electronically: https://lni-wa-gov.zoom.us/j/89225681620?pwd=-bkh6emF3bGUraHlxvFk5dTjJtJmQ09 Passcode (if prompted): Ware@530 To join by phone (audio only): 253-215-8782 Meeting ID: 892 2568 1620 Passcode: 12275394	A pre-hearing overview will begin at 5:30 p.m. The hearing will start at 6:00 p.m. and will continue until all oral comments are received. This public hearing will be held jointly with L&I's Division of Fraud Prevention and Labor Standards.
April 15, 2024	1:30 p.m.	Dept. of Labor & Industries 12806 Gateway Drive S Tukwila WA 98168	A pre-hearing overview will begin at 1:00 p.m. The hearing will start at 1:30 p.m. and will continue until all oral comments are received. This public hearing will be held jointly with L&I's Division of Fraud Prevention and Labor Standards.

Date of intended adoption: May 31, 2024 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Carmyn Shute, Administrative Regulations Analyst

Address: Department of Labor & Industries
Division of Occupational Safety and Health
PO Box 44620
Olympia WA 98504-4620

Email: WarehouseRules@Lni.wa.gov

Fax: 360-902-5619

Assistance for persons with disabilities:

Contact Carmyn Shute, Administrative Regulations Analyst

Phone: 360-870-4525

Fax: 360-902-5619

TTY:

Other:
By (date) 5:00 p.m. April 22, 2024

Email: WarehouseRules@Lni.wa.gov
Other:
By (date) April 1, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: L&I's Division of Occupational Safety and Health (DOSH) and Division of Fraud Prevention and Labor Standards (FPLS) are required to implement and enforce Second Substitute House Bill 1762 (2SHB 1762), codified as chapter 49.84 RCW, is an act related to protecting the health and safety of employees in warehouses. L&I must adopt WAC rules to fully and adequately enforce the law. This act becomes effective July 1, 2024.

WAC 296-360-200 Retaliation protections and enforcement – Warehouse distribution centers. Establishes protected activities covered by this chapter and RCW 49.84.062 and 49.84.040.

WAC 296-35-010 Scope. Sets scope of the rule.

WAC 296-35-100 Definitions. Establishes definitions that apply to this chapter. Definitions are numerated for ease in cross referencing.

WAC 296-35-200 Quota time periods and reasonable travel time. Establishes that time periods applied to quotas must include reasonable travel time and time to use the bathroom.

WAC 296-35-250 Employer size determination. Establishes how the department will determine the employer size for purposes of establishing penalties under chapter 49.17 RCW.

WAC 296-35-300 Quota – Violations of WISHA. Establishes violations for quotas that expose an employee to occupational health and safety hazards. A non-exhaustive table of examples is provided.

WAC 296-35-350 Employer recordkeeping requirements. Establishes the requirement for employers to maintain and preserve all records related to how a quota is determined for three years.

WAC 296-35-400. Protection from adverse action for failure to meet a quota in violation of WISHA. Establishes that an employer may not take adverse action against an employee for failing to meet a quota that violates RCW 49.84.032 or this chapter.

WAC 296-35-500 Retaliation protections and enforcement. Establishes that employers or their designee may not take adverse action against an employee or former employee for exercising any rights established by this chapter or RCW 49.84.032.

WAC 296-35-600 Severability clause. Declares that if any provision of this rule is held invalid, the remainder of the rule is not affected.

Reasons supporting proposal: L&I's Division of Occupational Safety and Health (DOSH) must adopt rules under the Washington Administrative Code (WAC) to implement and enforce the requirements related to warehouse worker quotas under chapter 49.84 RCW.

Statutory authority for adoption: RCW 49.84.060, 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute being implemented: Chapters 49.17 and 49.84 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: No additional comments.

Type of proponent: Private Public Governmental

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

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Tracy West	Tumwater, WA	509-237-2372
Implementation:	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: Carmyn Shute, Administrative Regulations Analyst
- Address: Department of Labor and Industries
Division of Occupational Safety and Health
PO Box 44620
Olympia WA 98504-4620
- Phone: 360-870-4525
- Fax: 360-902-5619
- TTY:
- Email: WarehouseRules@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:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> 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: Under RCW 49.84.010(9)(a), the proposed rule only apply to employers with 100 more employees at a single warehouse distribution center in the state or 1,000 or more employees at one or more warehouse distribution centers in the state.

(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: March 5, 2024

Name: Joel Sacks

Title: Director

Signature:

