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: October 23, 2019
TIME: 10:01 AM

WSR 19-21-176

Agency: Washington State Department of Agriculture

☒ **Original Notice**
☐ **Supplemental Notice to WSR**
☐ **Continuance of WSR**

☒ **Preproposal Statement of Inquiry was filed as WSR 19-16-153 ; 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) WAC 16-201-240: Maintenance and Inspection

In response to a petition for rule making, the department is proposing to add pressure testing as an option for inspecting for leaks within the appurtenances of liquid bulk fertilizer storage facilities.

Hearing location(s):

Date:	**Time:**	**Location:** (be specific)	**Comment:**
December 13, 2019	1:00 PM	Red Lion Hotel Design and Project Room 2525 North 20th Avenue Pasco, WA 99301	

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

Submit written comments to:
Name: Gloriann Robinson, Agency Rules Coordinator
Address: P.O. Box 42560
Olympia, WA 98504-2560
Email: wsdarulescomments@agr.wa.gov
Fax: (360) 902-2092
Other:
By (date) 5:00 PM December 13, 2019

Assistance for persons with disabilities:
Contact Maryann Connell
Phone: (360) 902-2012
Fax: (360) 902- 2093
TTY: 800-833-6388 or 711
Email: mconnell@agr.wa.gov
Other:
By (date) December 6, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The current rule only allows a visual observation for any evidence of leaks, spills, cracks, solar decay or wear of fertilizer bulk storage facilities. Adding pressure testing as another option will allow the fertilizer industry to place liquid fertilizer in appurtenances underground, increasing efficiency and safety, while preserving the original intent of the rule to minimize the risk of a fertilizer release.

Reasons supporting proposal: The secondary containment rules (chapter 16-201 WAC) for fertilizers came into effect in 1997. The objective of these rules was to establish guidelines for the protection of ground and surface water by minimizing the risk of a fertilizer release. As with most businesses in production agriculture, the fertilizer industry has changed significantly over time. Economics within the industry have forced manufacturing and distribution facilities to consolidate operations, thus creating fewer but larger facilities. In the past, facilities were geographically located in a company's service area and typically had storage volumes of 50,000 to 125,000 gallons of fertilizer. The service area for those locations was commonly 25-45 miles from the facility. In an effort to increase efficiency, companies have been replacing many of the smaller facilities with fewer, much larger facilities with storage capacities ranging from 250,000 gallons to several million gallons, and extending their service area to 150 miles or more.

With larger storage capacity needs, facilities that once held storage containers for 5 or 6 products in a location now require the same physical area for one container to store a single product. Consequently, facilities with larger storage capacities and a greater number of products significantly increases the distance from the operational area (where trucks are filled) to the storage area of the fertilizer. This requires long runs of pipe to be contained in concrete and metal-grated chases or in elevated pipe racks. Above ground piping creates a hazard to a large facility due to the large number of pipes and the distance between tanks and operational area. This above ground piping can be damaged by heavy or over-height machinery.

Currently, WAC 16-201-240 only allows for a visual observation for any evidence of leaks, spills, cracks, solar decay or wear during an inspection process. This requires all appurtenances (pipes, fittings, etc.) to be above ground so that they can be visually inspected. Placing the appurtenances underground would allow for a safer, more efficient and more economic operation, but complicates the visual inspection requirement. Adding a pressure test option as a form of inspection to check for leaks in the underground lines would not only preserve the original intent of the rule to minimize the risk of a fertilizer release, but also improves safety and efficiency for fertilizer facilities. The intent of adding the option for pressure testing is not to test the burst rate of the pipe itself, but to provide evidence of a leak.

Statutory authority for adoption: RCW 15.54.800

Statute being implemented: RCW 15.54

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Far West Agribusiness Association

☒ Private
☐ Public
☐ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Kelle Davis	1111 Washington St SE, Olympia, WA 98504	360-902-1851
Implementation:	Kelle Davis	1111 Washington St SE, Olympia, WA 98504	360-902-1851
Enforcement:	Brent Perry	222 North Havana, Spokane, WA 99202	509-995-2876

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: The Washington State Department of Agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

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:

☐ RCW 34.05.310 (4)(b) (Internal government operations)
☐ RCW 34.05.310 (4)(c) (Incorporation by reference)
☐ RCW 34.05.310 (4)(d) (Correct or clarify language)
☐ RCW 34.05.310 (4)(e) (Dictated by statute)
☐ RCW 34.05.310 (4)(f) (Set or adjust fees)
☐ 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. The proposed rule does not impose any additional costs on businesses. There is no cost to comply with the rule, because the proposed rule is adding another option as a form of inspection. Fertilizer facilities may choose to continue using visual observation as a form of inspection. Those companies who would prefer to install appurtenances underground for liquid bulk fertilizer would be able to meet inspection requirements by utilizing pressure testing.

☐ 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:

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Address: PO Box 42560, Olympia, WA 98504-2560
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TTY: (800) 833-6388
Email: wsdarulescomments@agr.wa.gov
Other:

Date: October 23, 2019	**Signature:**
Name: Robin Schoen-Nessa	
Title: Assistant Director	

AMENDATORY SECTION (Amending WSR 00-23-075, filed 11/17/00, effective 12/18/00)

WAC 16-201-240 Maintenance and inspection. (1) The operator of a fertilizer bulk storage facility shall inspect and maintain storage containers, appurtenances, secondary containment and operational area containment to minimize the risk of a fertilizer release.

(2) The inspection shall include a visual observation for any evidence of leaks, spills, cracks, solar decay or wear. Pressure testing may be used in lieu of visual observation for leaks in liquid bulk fertilizer facilities.

For the purpose of this section, "pressure testing" means a test sufficient to determine the presence or absence of a leak within the appurtenances of a liquid bulk fertilizer storage facility. Such pressure testing must be conducted at a pressure rate exceeding the standard operating pressure of the liquid bulk fertilizer storage facility, and must be conducted in accordance with standards established for the materials of the appurtenances, if such standards have been established.

((~~(2)~~)) (3) Maintenance of the fertilizer bulk storage facilities shall be performed as needed to ensure that the integrity of the bulk fertilizer storage containers, secondary containment and operational area containment is maintained.

((~~(3)~~)) (4) Bulk fertilizer storage containers and appurtenances shall be inspected at least once per month when in use. Secondary containment and operational area containment shall be inspected at least once per month when in use.

((~~(4)~~)) (5) All secondary and operational area containment shall be maintained free of debris and foreign matter.

((~~(5)~~)) (6) A written record of all inspections and maintenance shall be made on the day of the inspection or maintenance and kept at the storage site or at the nearest local office from which the storage site is administered.

((~~(6)~~)) (7) Inspection records shall contain the name of the person making the inspection, the date of the inspection, conditions noted and maintenance performed.