

WSR 21-04-075

AGENDA

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed January 29, 2021, 2:29 p.m.]

Following is the department of labor and industries' (L&I) semi-annual rules development agenda for January 1 through June 30, 2021.

This report details current and anticipated rule-making activities for L&I. This agenda is for information purposes, and the noted dates of anticipated rule-making actions are estimates. There may be additional rule-making activities not anticipated at this time, such as to implement new state laws, meet federal requirements, or other circumstances.

Please contact Tracy West at 360-902-6954 or Tracy.West@Lni.wa.gov if you have any questions.

**Semi-Annual Rules Development Agenda  
January 1 - June 30, 2021**

WAC CHAPTER(S)	RULE SUBJECT	AGENCY CONTACT	PROPOSED TIMELINE			BRIEF DESCRIPTION OF CHANGES
			CR-101	CR-102	CR-103	
<b>Division: Administrative Services</b>						
296-30 296-31 296-33	Crime victims compensation	Maty Brimmer Crime Victims 360-902-6707	TBD	TBD	TBD	This rule making pertains to the administration of the crime victims compensation (CVC) program, mental health treatment rules and fees, and attendant services. This rule making will consider adopting some rules from chapters 296-14, 296-20, 296-21, 296-23, 296-23A, and 296-23B WAC.
<b>Division: Division of Occupational Safety and Health (DOSH)</b>						
296-36 296-155 Part Q	Compressed air (tunnels)	Chris Miller DOSH Standards Program 360-902-5516	9/18/12	TBD	TBD	This rule making is in response to petitions and other requests from labor and business industry stakeholders to update the compressed air work requirements in chapters 296-36 and 296-155 WAC Part Q.
296-62 296-155	Lead	Chris Miller DOSH Standards Program 360-902-5516	4/19/16	TBD	TBD	This rule making is in response to a petition and a series of stakeholder meetings. This rule making was initiated to update existing lead standards in both general industry and construction in light of increasing evidence of the hazards associated with occupational lead exposure.

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296-67	Process safety management of highly hazardous chemicals (PSM) for petroleum refineries	Chris Miller DOSH Standards Program 360-902-5516	8/22/17	TBD	TBD	The purpose of this rule making is to amend existing sections and create several new sections in chapter 296-67 WAC, Safety standards for process safety management of highly hazardous chemicals, which will only apply to petrochemical refining facilities. The current rules are outdated, not having been updated in over twenty years and do not reflect current industry practices.
296-52	Safety standards for possession, handling, and use of explosives	Chris Miller DOSH Standards Program 360-902-5516	1/23/18	TBD	TBD	In order to reflect technological advancements in explosives over the past ten to thirty years, and better align with federal regulations, L&I is updating the safety standards for possession, handling, and use of explosives. Focus areas will likely include definitions, licensing, storage, background check requirements, public disclosure, and transportation, among others sections.
296-155	Crane incident reporting requirement	Chris Miller DOSH Standards Program 360-902-5516	3/20/18	TBD	TBD	The purpose of this rule making is to provide clarity on L&I's interpretation of requirements relating to crane decertification and reinstatement. This rule making intends to address what activities are covered, and will clearly state that damage to critical parts of the crane would require notification, rather than just implying it. This rule making will include additional housekeeping changes as well.
296-155 Part S	Demolition standards	Chris Miller DOSH Standards Program 360-902-5516	7/5/18	2/2/21	4/20/21	The purpose of this rule making is to update the requirements regarding demolition standards. This rule making will remove confusing and unnecessary language, as well as add clarification where necessary throughout the rule to improve safety. Other updates and housekeeping changes may also be made throughout the chapter.
296-800	Adult entertainer safety (EHB 1756)	Chris Miller DOSH Standards Program 360-902-5516	11/5/19	TBD	TBD	The purpose of this rule making is to implement the requirements of EHB 1756 (chapter 304, Laws of 2019) codified under RCW 49.17.470, for adult entertainer safety in the accident prevention plan and other measures.

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296-155 Part L	Cranes, rigging, and personnel lifting	Chris Miller DOSH Standards Program 360-902-5516	11/19/19	TBD	TBD	This rule making [is] in response to Occupational Safety and Health Administration (OSHA) updating their standards for crane operator licensing/certification requirements and establishing minimum requirements for determining operator competency. Additionally, state-initiated amendments will also be proposed to address other areas in rule relating to cranes that either need to be updated based on current industry practice or clarifying some of the language to maintain safety and health protections for employees.
296-67	High hazard facilities workforce (ESHB 1817)	Chris Miller DOSH Standards Program 360-902-5516	2/18/20	TBD	TBD	The purpose of this rule making is to implement 2019's ESHB 1817, chapter 49.80 RCW, high hazard facility workforce. Chapter 49.80 RCW requires owners of petroleum refining or petrochemical manufacturing facilities use a skilled and trained workforce when contracting for construction, alteration, demolition, installation, repair, or maintenance work. This rule will address the advanced safety-training curriculum and training provider approval requirements.
296-307	Temporary worker housing (TWH)	Chris Miller DOSH Standards Program 360-902-5516	9/10/20	TBD	TBD	The purpose of this rule making, in conjunction with the department of health (DOH), is to consider permanent amendments to further protect occupants in TWH and cherry harvest camps. In February 2020, Governor Inslee proclaimed a State of Emergency in Washington state as a result of the coronavirus disease 2019 (COVID-19) outbreak, followed by proclamations and amendments. DOH and L&I also responded to the COVID-19 pandemic by adopting emergency rules to protect occupants from COVID-19 hazards in licensed TWH.
296-62	Wildfire smoke	Chris Miller DOSH Standards Program 360-902-5516	10/20/20	TBD	TBD	The purpose of this rule making is to develop new workplace safety and health rules regarding wildfire smoke. Some of the issues that may be addressed include: Identification of harmful exposures, communication, training and instruction, and control of harmful exposures.

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296-307 Parts A, I, and O	eRules reformatting, Phase XII	Chris Miller DOSH Standards Program 360-902-5516	11/3/20 (CR-105 Expedited)	N/A	2/2/21	This rule making is the twelfth filing package to reformat all DOSH rules. The purpose of this rule making is to provide consistency in formatting and design, and accessibility to the rules via mobile electronic devices.
296-900	Posting citation and notices	Chris Miller DOSH Standards Program 360-902-5516	12/22/20	TBD	TBD	The purpose of this rule making is to update WAC 296-900-13015, changing the length of time that a citation and notice, and any correspondence related to an employee complaint, needs to be posted on an employee safety bulletin board. L&I is considering changing the amount of time will be updated from three working days to seven working days.
296-800	Biological hazards	Chris Miller DOSH Standards Program 360-902-5516	TBD	TBD	TBD	The purpose of this rule making is to clarify to protect employees from all biological agents be it airborne, droplets, fluids, or any other methods.
296-307 Part I	Worker protection standard (pesticides) administrative changes	Chris Miller DOSH Standards Program 360-902-5516	TBD	TBD	TBD	The purpose of this rule making is to amend for housekeeping corrections from previous rule making to align language with the department of agriculture and add a table that is missing.
296-850	Beryllium	Chris Miller DOSH Standards Program 360-902-5516	TBD	TBD	TBD	This rule making is in response to OSHA updating their standards [for] beryllium, beryllium compounds and dermal exposure issues.
296-823	Infectious diseases	Chris Miller DOSH Standards Program 360-902-5516	TBD	TBD	TBD	The purpose of this rule making is to establish control measures to protect employees from infectious disease exposures to pathogens that can cause significant disease. During public health emergencies, disease outbreaks involving community spread of a pathogen may endanger workers in a wide range of settings.
296-840 296-307	Respirable crystalline silica (agriculture)	Chris Miller DOSH Standards Program 360-902-5516	TBD	TBD	TBD	The purpose of this rule making is to clarify the application of the respirable crystalline silica rules in agriculture.
269-307 Part Y	Precommercial thinning	Chris Miller DOSH Standards Program 360-902-5516	TBD	TBD	TBD	The rule making is to consider establishing minimum safety standards for precommercial thinning in agriculture.
<b>Division: Field Services and Public Safety</b>						

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296-150F	Factory assembled structures (FAS): Factory-built housing and commercial structures	Alicia Curry Field Services and Public Safety 360-902-6244	7/2/19	TBD	TBD	The purpose of this rule making is to update the rules regarding factory-built housing and commercial structures, to include panelized construction. This rule making will include intent to make the rules related to E2SHB 1257 Energy efficiency, HB 1486 Delegation of authority, and SB 5383 Tiny homes.
296-150I 296-150M	FAS: Manufactured homes and manufactured home installer training and certification program	Alicia Curry Field Services and Public Safety 360-902-6244	8/20/19	4/20/21	7/6/21	The purpose of this rule making is to update existing rules to comply with United States Department of Housing and Urban Development (HUD) regulations. In 2017, HUD reviewed FAS rules and standards for manufactured housing installations to ensure the program's compliance with HUD regulations. This rule making addresses HUD's findings that require revisions to L&I's rules. Additionally, the program is reviewing all rules in chapter 296-150I WAC for updates, clarity, and housekeeping changes.
296-96	Elevator rules	Alicia Curry Field Services and Public Safety 360-902-6244	10/22/19	TBD	TBD	The purpose of this rule making is to consider changes to the elevator rules. L&I's elevator program is reviewing specific sections of the elevator rules to update and clarify existing rules, make reference corrections, perform general housekeeping, and consider other rule changes.
296-104	Boiler rules and fee increase	Alicia Curry Field Services and Public Safety 360-902-6244	10/6/20	12/1/20	1/19/21	The purpose of this rule making is to update and clarify existing rules, increase fees by the fiscal growth factor of 5.91 percent for fiscal year 2021 to support operating expenses for inspections, and to modify the civil penalties for repairs and alterations to improve public safety.
296-150C 296-150F 296-150I 296-150M 296-150P 296-150T 296-150V	FAS fee increase	Alicia Curry Field Services and Public Safety 360-902-6244	11/3/20	12/22/20	2/16/21	The purpose of this rule making is to update FAS rules to increase fees by 5.91 percent for fiscal year 2021. The budget and projected revenue of the FAS program was evaluated and a fee increase is needed to support the cost of ongoing services.

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296-46B	Electrical board—Appeal rights and hearings	Alicia Curry Field Services and Public Safety 360-902-6244	12/1/20	3/2/21	5/18/21	The purpose of this rule making is to consider amendments to the electrical rules governing appeals and the appeal process under WAC 296-46B-995. The state's electrical board petitioned L&I to amend the rules for the purpose of clarifying, simplifying, and making the procedures for appeals to the board easier to understand and navigate.
296-46B	Electrical fee increase	Alicia Curry Field Services and Public Safety 360-902-6244	2/16/21	4/6/21	5/18/21	The purpose of this rule making is to consider a fee increase of 5.79 percent for the electrical program to support operating expenses for inspections. This is the office of financial management's (OFM) maximum allowable fiscal growth rate for fiscal year 2022. L&I evaluated the budget and projected revenue of the program and determined a fee increase is needed to help cover the cost of ongoing services.
296-104	Boiler fee increase	Alicia Curry Field Services and Public Safety 360-902-6244	TBD	TBD	TBD	The purpose of this rule making is to consider a fee increase of 5.79 percent for the boiler program to support operating expenses for inspections. This is OFM's maximum allowable fiscal growth rate for fiscal year 2022. L&I evaluated the budget and projected revenue of the program and determined a fee increase is needed to help cover the cost of ongoing services.
<b>Division: Fraud Prevention and Labor Standards</b>						
296-140 (new)	Clean energy labor standards certification	Beverly Clark Fraud Prevention and Labor Standards 360-902-6272	11/27/19	TBD	TBD	The Clean Energy Transformation Act (E2SSB 5116) of 2019 requires L&I adopt permanent rules related to labor standard certification for certain tax exemptions for alternative energy projects. The purpose of this rule making is to define and set minimum requirements for all labor standards associated with the certification for tax remittance; set requirements for all good faith efforts; and set other requirements for documentation and the certification process. L&I filed emergency rules on November 27, 2019, which became effective on January 1, 2020. Emergency rules were filed again on March 27, July 23, and November 20, 2020, as rule making is still ongoing.

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296-05	Apprenticeship rules	Beverly Clark Fraud Prevention and Labor Standards 360-902-6272	1/19/21	TBD	TBD	The purpose of this rule making is to amend WAC 296-05-008 Meetings and adjudicative proceedings, to allow the Washington state apprenticeship and training council to hold special meetings to meet more often than quarterly to consider records and enter final orders following adjudication processes. L&I adopted emergency rules on January 19, 2021.
296-200A	Contractor registration	Beverly Clark Fraud Prevention and Labor Standards 360-902-6272	TBD	TBD	TBD	The purpose of this rule making is to consider changes to the contractor registration rules. L&I's contractor registration program is reviewing specific sections of the contractor rules to update and clarify existing rules, make reference corrections, perform general housekeeping, and pursue a fiscal growth factor increase for fiscal year 2022 (5.79 percent).
296-400A	Plumber certification rules	Beverly Clark Fraud Prevention and Labor Standards 360-902-6272	TBD	TBD	TBD	The purpose of this rule making is to consider changes to the plumbing rules. L&I's plumber program is reviewing specific sections of the plumber rules to update and clarify existing rules, make reference corrections, perform general housekeeping, and look at fee increases for fiscal year 2022.
<b>Division: Insurance Services</b>						
296-17 296-17A	Employment covered by RCW 51.32.187 (department of energy Hanford site contractors)	Jo Anne Attwood Employer Services 360-902-4723	3/3/20	9/22/20 (withdrawn 1/22/21)	TBD	The purpose of this rule making is to allow contractors of the United States Department of Energy working at the Hanford site to have their contractors and subcontractors covered under the state fund. L&I filed continuances on October 27 and November 6, 2020, ultimately extending the comment period to February 1, 2021. The CR-102 Proposal was withdrawn on January 22, 2021, due to the need for more stakeholder involvement and coordination. L&I will continue working with stakeholders to refine proposed rules for potential future rule making.

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296-17 296-17A	Classification and reporting amendments 2022	Jo Anne Attwood Employer Services 360-902-4777	TBD	TBD	TBD	The purpose of this rule making is to implement clear rule writing to ensure L&I staff and customers can easily understand and apply the workers' compensation insurance classifications and reporting rules. Classification development studied some subclassifications for potential reduction in number, and reviewed reporting rules for improvement.
296-17 296-17B	Industrial insurance premium rates 2022	Jo Anne Attwood Employer Services 360-902-4777	6/22/21	9/21/21	11/30/21	This rule making establishes the premium rates and experience rating parameters for calendar year 2022.
296-23	Independent medical examinations (IMEs)	Kristen Baldwin-Boe Health Services Analysis 360-902-6815	10/6/20	TBD	TBD	The purpose of this rule making is to create new rules required by ESSB 6440 to address how to accommodate an injured worker if no approved independent medical examiner in the specialty needed is available in a reasonably convenient location, as well as how telemedicine IMEs may be used.
296-20 296-23	Medical aid rules update	Emily Stinson Health Services Analysis 360-902-5974	12/22/20	3/2/21	5/18/21	The purpose of this rule making is to update payment rates for health care services, which are published annually in the medical aid rules and fee schedules.
296-23A	Outpatient hospitals (medical aid rules)	Dee Hahn Health Services Analysis 360-902-2868	TBD	TBD	TBD	The purpose of this rule making is to consider amending two rules that L&I determined are in conflict with each other because the underlying federal regulations (per Centers for Medicare and Medicaid Services) changed January 1, 2017 (creating the conflict).
296-14	Presumptive posttraumatic stress disorder (PTSD) coverage (SSB 6214)	Suzy Campbell Legal Services 360-902-5003	8/21/18	TBD	TBD	The purpose of this rule making is to update existing rules and create new rules needed to implement SSB 6214, allowing industrial insurance coverage for PTSD of law enforcement, firefighters and emergency medical technicians.



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296-14	Occupational disease presumption	Jordan Ely Legal Services 360-902-4616	11/19/19	TBD	TBD	The purpose of this rule making is to amend existing rules that conflict with RCW 51.32.185, and clarify presumptive coverage for certain firefighters, law enforcement officers, and emergency medical technicians covered under workers' compensation. Legislation passed during the 2019 and 2018 sessions (chapter 133, Laws of 2019, HB 1913; and chapter 264, Laws of 2018, SSB 6214) resulted in updates to RCW 51.32.185.
296-21	Master's level therapists pilot	Suzy Campbell Legal Services 360-902-5003	12/3/19	TBD	TBD	The purpose of this pilot rule making is to allow master's level therapists (MLTs) to treat injured workers. L&I decided to initiate a pilot to help determine how MLTs can best be incorporated into the workers' compensation setting. Under this pilot, these current provisions related to treatment by MLTs are waived for pilot participants only. The pilot will begin on January 1, 2020, and the exceptions granted are effective throughout a four-year pilot period or as otherwise specified.
296-14	Pension discount rate 2021	Suzy Campbell Legal Services 360-902-5003	8/18/20	10/20/20	1/5/21	The purpose of this rule making was to reduce the current pension discount rate for 2021. The pension discount rate is the interest rate used to account for the time value of money when evaluating the present value of future pension payments.
296-17B	Retrospective rating for workers' compensation insurance	Rachelle Bohler Retrospective Rating 360-902-5967	11/5/13	TBD	TBD	This rule making will address extending requirements for businesses that enroll in individual retro plans and revise enrollment requirements for businesses under common majority ownership.
296-17B	Retrospective rating for workers' compensation insurance—Common ownership (pilot)	Rachelle Bohler Retrospective Rating 360-902-5967	8/5/15	TBD	TBD	This pilot rule making will consider/allow exceptions to the retroactive rating program's current common ownership rule (WAC 296-17B-770) as written.
296-15	Licensing and certification of administrators (SHB 2409)	Sue Callaghan Strategic Business Office 360-902-4913; Starla Treznoski Self-Insurance 360-902-5668	10/6/20	3/2/21	5/18/21	The purpose of this rule making is to update existing rules and create new rules as needed to implement SHB 2409, which requires the licensing of third party administrators and certification of all claims administrators.

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296-15	Self-insurance financial rules	Brian Schmidkofer Self-Insurance 360-902-6839	11/17/20	TBD	TBD	The purpose of this rule making is to update the rules for the financial qualification and maintenance of self-insurance certification, so that these rules are consistent with modern business practices. Existing rules will be amended, and new sections may be added.
296-15	Communication of mental health information (SHB 1909)	LaNae Lien Self-Insurance 360-902-6968	11/17/20 (withdrawn 1/26/21)			The purpose of [this] rule making was to amend the existing claim file confidentiality rules regarding the release of mental health records to align with recent amendments to statute RCW 51.28.070. The CR-101 preproposal was withdrawn on January 26, 2021. Based on stakeholder input, L&I decided not to proceed with rule making and instead will put the worker's rights language on the self-insured accident report form (SIF-2).

Tracy West  
Rules Coordinator