

WSR 21-17-017

AGENDA

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed August 5, 2021, 2:38 p.m.]

The department of labor and industries' (L&I) prepares a semi-annual rules development agenda in January and July each year to inform the public of expected upcoming rule changes. Pursuant to RCW 34.05.314, the agenda is filed with the office of the code reviser for publication in the Washington State Register. This report details current and anticipated rule-making activities for L&I. This agenda is for informational 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.

L&I encourages the public to be involved in the rule-making processes by attending public hearings and submitting comments regarding rules. Rule-making information is available on the agency website at <https://www.lni.wa.gov/rulemaking-activity/>. To stay informed of our progress and be notified of any changes, please sign up for email notifications <https://public.govdelivery.com/accounts/WADLI/subscriber/new>. Under General, select *Rules Update*.

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

KEY

CR: "Code reviser" on the rule-making forms, which are produced by the office of the code reviser for use by all state agencies.

CR-101: Preproposal statement of inquiry filed under RCW 34.05.310.

CR-102: Proposed rule-making notice filed under RCW 34.05.320 or 34.05.340.

CR-103: Rule-making order permanently adopting a rule, and filed under RCW 34.05.360 and 34.05.380.

CR-105: Expedited rule-making proposal filed under RCW 34.05.353.

RCW: Revised Code of Washington.

WAC: Washington Administrative Code.

WSR: Washington State Register official filing reference number given by the office of the code reviser when a notice is filed.

**Semi-Annual Rules Development Agenda
July 1 - December 31, 2021**

WAC CHAPTER	RULE SUBJECT	PURPOSE AND SCOPE OF RULE MAKING	Preproposal Notice (CR-101) Filing Date and WSR #	Proposed Rule (CR-102 or CR-105) Filing Date and WSR #	Permanent Rule (CR-103) Filing Date and WSR #	AGENCY CONTACT
Division: Division of Occupational Safety and Health (DOSH)						
296-36 296-155 Part Q	Compressed air (tunnels)	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.	9/18/12 12-19-075	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516

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296-62 296-155	Lead	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.	4/19/16 16-09-092	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-67	Process safety management of highly hazardous chemicals (PSM) for petroleum refineries	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 20 years and do not reflect current industry practices.	8/22/17 17-17-134	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-52	Safety standards for possession, handling, and use of explosives	The purpose of this rule making is to update the safety standards concerning explosives in order to reflect technological advancements in explosives over the past ten to 30 years, and better align with federal regulations. Focus areas will likely include definitions, licensing, storage, background check requirements, public disclosure, and transportation, among others sections.	1/23/18 18-03-162	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516

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296-800	Adult entertainer safety (EHB 1756)	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.	11/5/19 19-22-062	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-67	High hazard facilities— Workforce (ESHB 1817)	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.	2/18/20 20-05-073	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516

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296-307	Temporary worker housing (TWH)	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 (CR-103E) to protect occupants from COVID-19 hazards in licensed TWH.	9/10/20 20-19-050	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-62	Wildfire smoke	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. L&I filed emergency rules (CR-103E) on July 16, 2021 (WSR 21-15-067) to ensure these requirements were in place while permanent rule making is ongoing.	10/20/20 20-21-093	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516

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296-900	Posting citation and notices	The purpose of this rule making is to update WAC 296-900-13015 to change 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 also proposed to add language giving the employer the option to use electronic means to supplement the safety bulletin board for those employees that don't work where the physical board is located, such as those who telework.	12/22/20 21-01-200	7/6/21 21-14-077	Anticipate filing 9/21/21	Chris Miller DOSH Standards Program 360-902-5516
To be determined	Occupational exposures to infectious or contagious diseases (ESSB 5092)	The purpose of this rule making is to implement the requirements of 2021's ESSB 5092, section 220(8), to establish occupational health protections related to infectious diseases to ensure the state has general guidelines to follow in the case of an infectious disease outbreak. This would include when there is an outbreak subject to a public health emergency under a national or state-declared state of emergency.	5/13/21 21-11-051	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516

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296-155	Trenching rescue and excavation plan	The purpose of this rule making is to require employers to develop and implement a written excavation plan detailing appropriate risk analysis and rescue planning prior to beginning any work that requires a protective system (generally defined as any excavation four feet or deeper that is not in stable, solid rock).	6/22/21 21-13-140	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516

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296-155	Safety standards for cranes	<p>The purpose of this rule making is to amend the safety standards for cranes and derricks in construction, due in part to the Occupational Safety and Health Administration (OSHA) recently updating their standards. This rule making is also intended to provide clarity on L&I's interpretation of requirements related to crane decertification and reinstatement. In addition, state-initiated amendments will also be considered to address other areas in chapter 296-155 WAC 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. Due to OSHA updating their standard, prior rule-making preproposals regarding these subjects initiated in 2018 and 2019 were withdrawn under WSR 21-14-078 and 21-14-079.</p>	7/6/21 21-14-080	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516

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296-62 296-307	Outdoor heat exposure	The purpose of this rule making is to provide standards when heat rises above a specific temperature that may require shade provisions, rest breaks and cool-down procedures, drinking water suitability, and other necessary provisions to protect workers from high heat. L&I filed emergency rules (CR-103E) on July 9, 2021 (WSR 21-15-017), to ensure these requirements were in place while L&I plans a comprehensive reexamination of the current rules prior to initiating permanent rule making.	To be determined	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-900 296-360	Daily penalties for violating an order of immediate restraint (OIR) (ESHB 1097)	Rule making is anticipated to implement the provisions of 2021's ESHB 1097 related to daily penalties for violating an OIR, including establish inspection procedures and enforcement policies related to calculating penalties when OIRs and/or red tags are placed; and provide guidance on how to correctly calculate penalties arising from the placement of an OIR, or a red tag.	To be determined	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-360	Safety and health discrimination protections (ESHB 1097)	Rule making is anticipated to implement 2021's ESHB 1097 related to safety and health discrimination.	To be determined	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
To be determined	Temporary workers in construction and manufacturing (SHB 1206)	Rule making is anticipated to implement the new requirements under 2021's SHB 1206 related to temporary workers in the construction and manufacturing.	To be determined	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516

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296-307 Part I	Worker protection standard (pesticides) administrative changes	The purpose of this rule making is for housekeeping corrections from previous rule making to align language with the department of agriculture and add a table that is missing.	To be determined	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-850	Beryllium	The purpose of this rule making is to update the standard regarding occupational exposure to beryllium, beryllium compounds, and dermal exposure issues, due to the OSHA updating their standard.	To be determined	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-840 296-307	Respirable crystalline silica (agriculture)	The purpose of this rule making is to clarify the application of the respirable crystalline silica rules in agriculture.	To be determined	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
296-307 Part Y	Precommercial thinning	The purpose of this rule making is to consider establishing minimum safety standards for pre-commercial thinning in agriculture.	To be determined	To be determined	To be determined	Chris Miller DOSH Standards Program 360-902-5516
Division: Field Services and Public Safety						
296-150F	Factory assembled structures (FAS): factory-built housing and commercial structures	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.	7/2/19 19-14-106	To be determined	To be determined	Alicia Curry Field Services and Public Safety 360-902-6244

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296-150I 296-150M	FAS: Manufactured homes and manufactured home installer training and certification program	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.	8/20/19 19-17-071	Anticipate filing 8/31/21	Anticipate filing 11/30/21	Alicia Curry Field Services and Public Safety 360-902-6244
296-96	Elevator rules	The purpose of this rule making is to consider changes to the elevator rules and fees. The elevator program reviewed the rules to address requests from stakeholders held over from a 2018 rule-making process and to further update and clarify existing rules. The program also reviewed their budget and projected revenue. L&I filed a continuance to correct a public hearing link.	10/22/19 19-21-154	5/18/21 21-11-082 6/1/21 (continuance) 21-12-089	Anticipate filing 8/31/21	Alicia Curry Field Services and Public Safety 360-902-6244

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296-46B	Electrical board— Appeal rights and hearings	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.	12/1/20 20-24-104	Anticipate filing 11/2/21	Anticipate filing 2/15/22	Alicia Curry Field Services and Public Safety 360-902-6244
296-104	Boiler fee corrections	The purpose of this expedited rule making is to propose corrections to the boiler fees. On June 1, 2021, the board of boiler rules and L&I adopted a fee increase of 5.79 percent to support operating expenses for the boiler program (WSR 21-12-088). This is the office of financial management's (OFM) maximum allowable fiscal growth factor rate for fiscal year 2022. Due to a typographical error, four of the inspection fees pertaining to power boilers and pressure vessels are incorrect. This rule making corrects the error by reducing the four fees to the fiscal growth factor amount.	Not applicable	8/3/21 (CR-105) 21-16-098	Anticipate filing 10/5/21	Alicia Curry Field Services and Public Safety 360-902-6244

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296-400A	Plumber certification rules— Phase 3	The purpose of this rule making is to consider amendments under chapter 206-400A WAC, Plumber certification rules, in order to implement the legislative changes made within 2020's Plumbing Act (chapter 153, Laws of 2020, SB 6170), updates to continuing education, training programs, and other necessary updates to all plumbing rules.	To be determined	To be determined	To be determined	Alicia Curry Field Services and Public Safety 360-902-6244 (eff. 9/1/21)
296-200A	Contractor registration	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 pursuing [pursuing] a fiscal growth factor increase for fiscal year 2022 (5.79 percent).	To be determined	To be determined	To be determined	Alicia Curry Field Services and Public Safety 360-902-6244 (eff. 9/1/21)

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296-104	Boiler fee increase (fiscal year 2023)	The purpose of this rule making is to consider a 5.58 percent fee increase for boiler inspections and other boiler program public safety activities. The amount of the increase is the state OFM's maximum allowable fiscal growth factor rate for fiscal year 2023. The current fee levels are not adequate enough to cover current program expenses. A fee increase is needed to ensure the programs' revenues match expenditures, otherwise, service levels may need to be reduced.	To be determined	To be determined	To be determined	Kimmie Stringfellow Field Services and Public Safety 360-902-5039
296-96	Elevator rules	The purpose of this rule making is to consider a 5.79 percent fees increase for inspections of conveyances and other elevator program public safety activities. The amount of the increase is the state OFM's maximum allowable fiscal growth factor rate for fiscal year 2022. The current fee levels are not adequate enough to cover current program expenses. A fee increase is needed to ensure the programs' revenues match expenditures, otherwise, service levels may need to be reduced.	To be determined	To be determined	To be determined	Kimmie Stringfellow Field Services and Public Safety 360-902-5039
296-96	Elevator rules (code adoption)	The purpose of this rule making is to consider adopting new safety codes for conveyances, including updates, clarification, housekeeping, and other changes.	To be determined	To be determined	To be determined	Alicia Curry Field Services and Public Safety 360-902-6244
Division: Fraud Prevention and Labor Standards						

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296-140 (New chapter)	Clean energy labor standards certification (E2SSB 5116)	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 (CR-103E) 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, and March 19 and July 16, 2021 (WSR 21-15-078), as rule making is still ongoing.	11/27/19 19-24-062	8/3/21 21-16-103	Anticipate filing 10/5/21	Beverly Clark Fraud Prevention and Labor Standards 360-902-6272

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296-05	Apprenticeship rules (special meetings)	<p>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 (CR-103E) on January 19, 2021 (WSR 21-03-076) and May 19, 2021 (WSR 21-11-116), and anticipates filing a third emergency rule on September 16, 2021, while permanent rule making continues.</p>	1/19/21 21-03-077	Anticipate filing 9/21/21	Anticipate filing 11/2/21	Beverly Clark Fraud Prevention and Labor Standards 360-902-6272
296-127	Prevailing wage intent and affidavit filing fees	<p>The purpose of this rule making is to set the intent and affidavit filing fees in order to implement the legislative changes made within 2019's Prevailing wage program fees— Determination— Limit Act (chapter 193, Laws of 2019, SB 5566). L&I filed an emergency rule (CR-103E) on July 1, 2021 (WSR 21-14-045) to ensure these requirements were in place before the 2019-2021 biennium ended.</p>	6/22/21 21-13-159	Anticipate filing 8/17/21	Anticipate filing 9/28/21	Beverly Clark Fraud Prevention and Labor Standards 360-902-6272
Division: Insurance Services						

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296-17 296-17A	Employment covered by RCW 51.32.187 (department of energy (DOE) Hanford site contractors)	The purpose of this rule making is to allow contractors of the United States DOE 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, under WSR 20-22-038 and 20-23-017. The CR-102 Proposal was withdrawn (WSR 21-04-019) 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.	3/3/20 20-06-060	9/22/20 20-19-132 (withdrawn)	To be determined	Jo Anne Attwood Employer Services 360-902-4777
296-17 296-17A	Classification and reporting amendments 2022	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.	3/23/21 21-07-113	Anticipate filing 8/17/21	Anticipate filing 11/2/21	Jo Anne Attwood Employer Services 360-902-4777
296-17 296-17B	Industrial insurance premium rates 2022	The purpose of this rule making is to establish the premium rates and experience rating parameters for calendar year 2022.	6/22/21 21-13-138	Anticipate filing 9/21/21	Anticipate filing 11/30/21	Jo Anne Attwood Employer Services 360-902-4777

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296-23	Independent medical examinations (IMEs) (ESSB 6440)	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.	10/6/20 20-20-111	To be determined	To be determined	Kristen Baldwin-Boe Health Services Analysis 360-902-6815
296-23A	Outpatient hospitals (medical aid rules)	The purpose of this rulemaking is to amend 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.	3/2/21 21-06-089	6/22/21 21-13-137	Anticipate filing 8/31/21	Dee Hahn Health Services Analysis 360-902-2868
296-14	Presumptive PTSD coverage (SSB 6214)	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 posttraumatic stress disorders of law enforcement, firefighters and emergency medical technicians.	8/21/18 18-17-151	To be determined	To be determined	Suzy Campbell Legal Services 360-902-5003

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296-14	Occupational disease presumption	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.	11/19/19 19-23-081	To be determined	To be determined	Jordan Ely Legal Services 360-902-4616
296-21	Master's level therapists pilot (MLTs)	The purpose of this pilot rule making is to allow 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 began on January 1, 2020, and the exceptions granted are effective throughout a four-year pilot period or as otherwise specified.	12/3/19 19-24-087	To be determined	To be determined	Suzy Campbell Legal Services 360-902-5003

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Title 296 WAC (new chapter possible)	IME—Case progress (ESSB 6440)	ESSB 6440, 2020 legislative session, amended requirements by identifying the reasons IMEs could be used. One requirement, "case progress," in RCW 51.36.070 is not clearly defined. Rule making allows L&I to define the term and/or criteria. Rule making may also provide consequences for IMEs that were requested or occurred outside what is allowed by statute or rule.	5/18/21 21-11-086	Anticipate filing 9/21/21	Anticipate filing 11/16/21	Suzy Campbell Legal Services 360-902-5003
Title 296 WAC (new chapter possible)	IME—Appeals (ESSB 6440)	ESSB 6440, 2020 legislative session, limited the reasons IMEs could be used. One reason is to resolve an appeal, but there was no indication of when or under what circumstances such an IME would be appropriate. Rule making allows L&I to define criteria and/or determine limitations for these IMEs.	8/3/21 21-16-093	Anticipate filing 9/21/21	Anticipate filing 11/16/21	Suzy Campbell Legal Services 360-902-5003
296-14	Pension discount rate 2022	The purpose of this rule making is to reduce the current pension discount rate for 2022. 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.	Anticipate filing 8/17/21	Anticipate filing 10/19/21	Anticipate filing 1/4/22	Suzy Campbell Legal Services 360-902-5003
296-17B	Retrospective rating for workers' compensation insurance	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.	11/5/13 13-22-071	To be determined	To be determined	Rachelle Bohler Retrospective Rating 360-902-5967

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296-17B	Retrospective rating for workers' compensation insurance— Common ownership (pilot)	This pilot rule making will consider/allow exceptions to the retroactive rating program's current common ownership rule (WAC 296-17B-770) as written.	8/5/15 15-16-132	To be determined	To be determined	Rachelle Bohler Retrospective Rating 360-902-5967
296-17A 296-17B	COVID-19 related relief option	Data shows that the COVID-19 pandemic and resulting government required shutdowns disproportionately impacted employers who reported hours in 42 risk classes, thereby reducing the options to help workers return to work. This may lead to increased claim losses for businesses in the affected classes compared to other employers. For affected retro participants who experience increased loss ratios, they may be subject to a negative bias resulting in their refunds being reduced or additional premium assessed. Conversely, the less affected retro participants may experience a positive bias whereby they may receive enhanced refunds that they would not have otherwise received but for the pandemic's adverse impact on their peers.	6/1/21 21-12-082	To be determined	To be determined	Leslie Qunell Retrospective Rating 360-902-5967
Division: Government Affairs and Policy Division						

WAC CHAPTER	RULE SUBJECT	PURPOSE AND SCOPE OF RULE MAKING	Preproposal Notice (CR-101) Filing Date and WSR #	Proposed Rule (CR-102 or CR-105) Filing Date and WSR #	Permanent Rule (CR-103) Filing Date and WSR #	AGENCY CONTACT
Title 296 WAC (new chapter)	Small employer emergency grants (ESHB 1097)	The purpose of this rule making is to establish guidance for a safety grant program for small employers based on the type, scope, and timeframe of a declared state [of] emergency, and criteria for how grants will be prioritized. ESHB 1097 (chapter 253, Laws 2021) provides for increased worker protections from hazards in the workplace. The bill also created a safety grant program for small employers during declared states of emergency. This law was motivated by recognition of the COVID-19 pandemic's impact on small businesses, especially those that had difficulty affording the cost of meeting required safety measures and providing personal protective equipment to workers.	8/3/21 21-16-099	Anticipate filing 10/19/21	Anticipate filing 12/21/21	Tracy West Government Affairs and Policy Division 360-902-6954