

WSR 23-14-043

AGENDA

DEPARTMENT OF  
LABOR AND INDUSTRIES

[Filed June 27, 2023, 11:17 a.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 process by attending public hearings and submitting comments regarding rules. Rule-making information is available on L&I's 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 Maggie Leland at 360-902-4504 or [Maggie.Leland@lni.wa.gov](mailto:Maggie.Leland@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, 2023**

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
<b>Division: Division of Occupational Safety and Health (DOSH)</b>						
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	Ryan Allen Division of Occupational Safety and Health (DOSH) Standards Program 360-902-4758

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296-67	Process safety management of highly hazardous chemicals 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	6/21/23 23-13-127	Anticipate filing 10/17/23	Ryan Allen DOSH Standards Program 360-902-4758
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 10 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	Ryan Allen DOSH Standards Program 360-902-4758
296-307	Temporary worker housing (TWH)	The purpose of this rule making, in conjunction with the department of health (DOH), is to adopt permanent amendments to address the hazards of communicable diseases, such as coronavirus disease 2019 (COVID-19), amongst TWH occupants. In February 2020, Governor Inslee proclaimed a state of emergency in Washington state as a result of the 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	5/3/23 23-10-092	Anticipate filing 7/25/23	Ryan Allen DOSH Standards Program 360-902-4758
New 296-820 296-307	Wildfire smoke	The purpose of this rule making is to address the hazards associated with wildfire smoke that employers and workers in affected regions must understand. Smoke from wildfires contains chemicals, gases, and fine particles that can harm health. Proper protective equipment, exposure controls, and training are needed for employees working in wildfire regions. L&I filed a CR-103E on July 16, 2021 (WSR 21-15-067), to ensure these requirements were in place during the 2021 fire season while permanent rule making is ongoing. Emergency rules were filed again on June 1, 2022 (WSR 22-12-094), for the 2022 fire season.	10/20/20 20-21-093	5/10/23 23-11-029	Anticipate filing 8/18/23	Ryan Allen DOSH Standards Program 360-902-4758

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To be determined	Occupational exposures to infectious or contagious diseases (ESSB 5092 implementation)	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	Ryan Allen DOSH Standards Program 360-902-4758
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	Anticipate filing 8/22/23	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
296-155	Cranes, rigging, and personnel lifting	The purpose of this rule making is to amend the safety standards for cranes and derricks in construction due, in part, to the federal Occupational Safety and Health Administration (OSHA) 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 updating 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.	7/6/21 21-14-080	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758

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296-56	Longshore and waterfront operations and restrooms in ports and railyards (SHB 1706 implementation)	The purpose of this rule making is to align the standard with SHB 1706 (RCW 70.54.480), passed by the legislature in 2022, regarding drayage truck operators' access to restrooms when operating in or on a port or railyard property. New requirements will include access to restrooms and dedicated space for lactation. This rule making will also better align chapter 296-56 WAC with OSHA requirements for marine terminals in 29 C.F.R. 1917, Subpart A.	9/6/22 22-18-081	Anticipate filing October 2023	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
286-305	Safety standards for firefighters	The purpose of this rule making is to consider rule making for WAC 296-305-03002 Hazardous materials, after receiving a rule petition. As requested in the petition, the rule making will consider updating rule language about the appropriate selection of chemical, biological, radiological, and nuclear (CBRN) ensembles and using the statement of standard for NIOSH CBRN SCBA testing. L&I will also consider updating WAC 296-305-04001 Respiratory equipment protection, which has guidance for breathing air quality for firefighters. The reference to ANSI/CGA G6-1, Commodity Specification for Air, needs to be updated to fix a typo in the standard number.	2/28/23 23-06-068	Anticipate filing 7/18/23	Anticipate filing 10/3/23	Ryan Allen DOSH Standards Program 360-902-4758
To be determined	Voluntary use of personal protective equipment (PPE)	The purpose of this rule making is to consider permanent rule making to allow the voluntary use of PPE when workers feel the need to protective themselves from noise, dust, or possible infectious or contagious diseases. The voluntary use of PPE must not introduce hazards to the work environment and facial coverings must not interfere with an employer's security requirements.	3/22/23 23-07-139	Anticipate filing 9/19/23	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
296-62	Surgical smoke (SHB 1779 implementation)	The purpose of this rule making is to adopt policies that require the use of a smoke evacuation system during any planned surgical procedure that is likely to generate surgical smoke which would otherwise make contact with the eyes or respiratory tracts of the occupants of the room.	N/A	Anticipate filing 7/18/23 (CR-105)	To be determined	Ryan Allen DOSH Standards Program 360-902-4758

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296-900	Daily penalties for violating an order of immediate restraint (OIR) (ESHB 1097 implementation)	Rule making is anticipated to implement the provisions of 2021's ESHB 1097 related to daily penalties for violating an OIR, including establishing 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.	Anticipate filing August 2023	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
296-880	Unified safety standards for fall protection	The purpose of this rule making is to clarify how WAC 296-880-30005 Construction work, and 296-880-40040 Warning line system requirements, work together when a safety monitor and/or warning line system may be used and to ensure alignment with 29 C.F.R. 1926.501 (b)(10).	To be determined	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
To be determined	Training and certification program— Application of fire-resistant material (SHB 1323 implementation)	Rule making is anticipated to implement the provisions of 2023's SHB 1323 related to requiring a training and certification program for individuals who apply fire-resistant materials.	To be determined	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
296-45	Requiring automated external defibrillators for high voltage work (HB 1542 implementation)	Rule making is anticipated to implement the provisions of 2023's HB 1542 related to requiring automated external defibrillators to be available and accessible when work is being performed on high voltage lines and equipment.	To be determined	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
<b>Division: Field Services and Public Safety</b>						
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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296-96	Elevator rules (safety codes)	The purpose of this rule making is to amend the elevator rules based on the review of new safety codes from the 2019 edition of the American Society of Mechanical Engineers A17.1/CSA B44 - 2019, Safety Code for Elevators and Escalators, and other related codes. The review included an opportunity for elevator stakeholders to participate in the process. A technical advisory committee (TAC), consisting of multiple industry representatives, and the elevator safety advisory board (ESAC) reviewed the proposals and provided advice to L&I on adoption of the rules. This rule making also proposes updates, clarification, housekeeping, and other amendments recommended by stakeholders, TAC, ESAC, and L&I to improve public safety.	10/19/21 21-21-088	5/2/23 23-10-083	Anticipate filing 8/1/23	Alicia Curry Field Services and Public Safety 360-902-6244
296-400A	Plumber certification rules—Phase 3	The purpose of this rule making is to consider amendments under the 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.	1/18/22 22-03-073	To be determined	To be determined	Alicia Curry Field Services and Public Safety 360-902-6244
296-46B	Electrical rules (code adoption)	The purpose of this rule making is to consider amendments based on the 2023 edition of the National Fire Protection Agency 70 and the National Electrical Code safety codes, along with updating and clarifying existing rules, and making housekeeping and other rule changes.	4/4/23 23-08-066	Anticipate filing 11/21/23	Anticipate filing 2/27/24	Meagan Edwards Field Services and Public Safety 360-522-0125
296-96	Elevator fee corrections	The purpose of this rule making is to consider corrections to the elevator fees. On October 18, 2022, L&I adopted an 8.5 percent increase to all elevator fees effective January 1, 2023, and January 1, 2024 (WSR 22-21-118). The fee increase was needed to support funding for a new conveyance management system. As a result of a typographical error, some of the fee implementation dates were incorrect. The fees affected include permits, inspections, and other services for conveyances. This rule making considers amendments to make corrections and for general housekeeping.	5/23/23 23-11-127	Anticipate filing 7/18/23	Anticipate filing 10/17/23	Meagan Edwards Field Services and Public Safety 360-522-0125

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296-150C 296-150F 296-150I 296-150M 296-150P 296-150R 296-150T 296-150V	FAS fee increase	The purpose of this rule making is to propose increasing fees by the fiscal growth factor for FAS to cover increased operating costs and new technology improvements for the FAS program. The current fee levels are insufficient to cover current program expenses. The fee increase is necessary to ensure that revenues match expenditures; otherwise, service levels may need to be reduced.	6/6/23 23-12-080	Anticipate filing 8/1/23	Anticipate filing 10/17/23	Meagan Edwards Field Services and Public Safety 360-522-0125
296-200A	Contractor registration (2SHB 1534 implementation—Phase 1)	The purpose of this expedited rule making is to amend the contractor registration rules to implement 2SHB 1534, chapter 213, Laws of 2023. 2SHB 1534 establishes new conditions that a contractor's registration must be denied if an applicant is a successor to a business entity with unsatisfied final judgments, with an exception, and for minor status.	N/A	6/20/23 (CR-105) 23-13-097	Anticipate filing 8/22/23	Alicia Curry Field Services and Public Safety 360-902-6244
296-200A	Contractor registration (2SHB 1534 implementation—Phase 2)	The purpose of this rule making is to amend the contractor registration rules to implement 2SHB 1534, chapter 213, Laws of 2023. Provisions of the law take effect July 1, 2024.	To be determined	To be determined	To be determined	Alicia Curry Field Services and Public Safety 360-902-6244
296-150P 296-150R 296-49A	FAS (SB 5089 and HB 1514 implementation)	The purpose of this rule making is to consider amendments to implement HB 1514 (chapter 78, Laws of 2023) and SB 5089 (chapter 36, Laws of 2023) that passed during the 2023 legislative session. L&I is also reviewing the FAS advisory board rules under chapter 296-49 WAC to consider updates, clarification, housekeeping, and other amendments.	To be determined	To be determined	To be determined	Meagan Edwards Field Services and Public Safety 360-522-0125
296-200A	Contractor registration—Classification updates	The purpose of this rule making is to consider updates to the definitions for specialty contractor classifications.	To be determined	To be determined	To be determined	Alicia Curry Field Services and Public Safety 360-902-6244
<b>Division: Fraud Prevention and Labor Standards</b>						
296-128	Paid sick leave, including provisions that apply to certain construction workers (ESSB 5111 implementation)	The purpose of this rule making is to implement the requirements of ESSB 5111, address statutory requirements in RCW 49.46.210 and 49.46.180, and additional cleanups to existing WAC language. This rule making intends to clarify new requirements to pay out accrued and unused sick leave for certain construction workers.	Anticipate filing 7/18/23	Anticipate filing 9/19/23	Anticipate filing 11/21/23	Ellen Saline Fraud Prevention and Labor Standards 360-902-4475
296-126	Warehouse distribution centers (HB 1762 implementation)	The purpose of this rule making is to implement the requirements of HB 1762. This rule making intends to clarify new requirements for warehouse distribution center employers and new warehouse employee protections.	Anticipate filing 8/22/23	Anticipate filing January 2024	Anticipate filing March 2024	Ellen Saline Fraud Prevention and Labor Standards 360-902-4475

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296-127	Prevailing wage —Intents and affidavits (SB 5268 implementation)	The purpose of this expedited rule making is to implement the requirements of SB 5268. This rule making intends to update the rule title, introduction, and subsection (7). Anticipated amendments include updating intents and affidavits from \$2,500 to \$5,000, and removing dollar amounts and cross-references to statute (RCW 39.12.040) to avoid future rule making if amounts are changed in statute in the future.	N/A	Anticipate filing 9/19/23 (CR-105)	Anticipate filing 11/21/23	Ellen Saline Fraud Prevention and Labor Standards 360-902-4475
<b>Division: Insurance Services</b>						
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 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	Reporting and classification amendments for 2024	The purpose of this rule making is to implement clear rule writing to ensure staff and customers can easily understand and apply the workers' compensation insurance classification and reporting rules. Classification development studied some subclassifications for potential reduction in number, and reviewed classification and reporting rules for improvement and clarification.	5/23/23 23-11-128	Anticipate filing 8/22/23	Anticipate filing 11/21/23	Jo Anne Attwood Employer Services 360-902-4777
296-17 296-17B	Industrial insurance premium rates 2024	The purpose of this rule making is to establish the premium rates and experience rating parameters for calendar year 2024.	6/20/23 23-13-095	Anticipate filing 9/19/23	Anticipate filing 11/30/23	Jo Anne Attwood Employer Services 360-902-4777
296-23	Independent medical examinations (IMEs) (ESSB 6440 implementation)	The purpose of this rule making is to address in rule how to accommodate a worker when there is no reasonably convenient examiner in the needed specialty near the worker's community, and to define when it may be appropriate for IMEs to be conducted via telemedicine. This rule making will implement ESSB 6440, which resulted in updates to RCW 51.32.110 and 51.36.070 and the addition of new chapter 51.08 RCW and new RCW 51.36.072.	10/6/20 20-20-111	4/18/23 23-09-053	Anticipate filing 8/1/23	Kristen Baldwin-Boe Health Services Analysis 360-902-6815



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296-23	Naturopathic physicians	The purpose of this rule making is to update billing and coding requirements for naturopathic physicians to support consistency with other payers and other attending provider types.	Anticipate filing 11/21/23	Anticipate filing February 2024	Anticipate filing May 2024	Megan Lemon 360-902-5161 Bob Mayer 360-902-5021 Health Services Analysis
296-20 296-23	Medical aid rules— Conversion factors	The purpose of this rule making is to update rates for most professional health care services for injured workers, which are published annually in the medical aid rules and fee schedules.	Anticipate filing December 2023	Anticipate filing March 2024	Anticipate filing May 2024	Megan Lemon 360-902-5161 Bob Mayer 360-902-5021 Health Services Analysis
296-21	Master's level therapists (MLT) pilot	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	Anticipate filing 8/1/23	Anticipate filing 10/31/23	Suzy Campbell Legal Services 360-902-5003
296-23	IME recordings (repeal)	The purpose of this expedited rule making is to repeal WAC 296-23-367, as a statute update invalidates the rule. SHB 1068 was adopted into law by the legislature effective July 23, 2023, requiring current rules be updated to align with changes made to RCW 51.36.070. The statute indicates workers have the right to record the audio, video, or both, of all IMEs ordered under this statute, RCW 51.32.110, and by the board of industrial insurance appeals. The current rule states video and audio recording for an IME isn't allowed.	N/A	6/6/23 23-12-072 (CR-105)	Anticipate filing 8/8/23	Suzy Campbell Legal Services 360-902-5003
296-23	IME notification process— Accompanying person	The purpose of this rule making is to consider updating and creating rules regarding IMEs. SHB 1068 allows a worker to audio and visually record an IME, and removes the prohibition against having an observer attend a mental health IME with the worker. The updated statute, RCW 51.36.070, requires L&I to create rules defining the notification process the worker must follow when they want to record an IME. WAC 296-23-362 needs to be updated as the statute removed the prohibition against having an observer attend a mental health IME.	6/20/23 23-13-096	Anticipate filing 10/17/23	Anticipate filing December 2023	Suzy Campbell Legal Services 360-902-5003

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296-14	Presumptive coverage of posttraumatic stress disorder (PTSD) as an occupational disease for direct care registered nurses (2SSB 5454 implementation)	The purpose of this rule making is to implement 2SSB 5454 which updated RCW 51.08.142. This rule making will add certain direct care registered nurses to the list of professions where there is a presumption that PTSD is an occupational disease.	Anticipate filing 7/18/23	Anticipate filing 9/5/23	Anticipate filing 12/5/23	Jordan Ely Legal Services 360-902-4616
296-14	Pension discount rate (PDR) 2024	The purpose of this rule making is to lower the PDR to better align with the rate of return for long-term treasuries for self-insured pensions. PDR is the interest rate used to account for the time value of money when evaluating the present value of future pension payments.	Anticipate Filing 8/22/23	Anticipate Filing 11/21/23	Anticipate Filing January 2024	Suzy Campbell Legal Services 360-902-5003
296-20	Psychologists as attending providers on mental health only claims (HB 1197 implementation)	The purpose of this rule making is to implement HB 1197 (chapter 171, Laws of 2023). This rule making will add language that clarifies that psychologists can be the attending provider on mental health only claims and other technical amendments to support that change.	Anticipate Filing 10/3/23	To be determined	To be determined	Jami Lifka Office of the Medical Director 360-902-4941 Jami.Lifka@Lni.wa.gov
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
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
296-17 296-17B	Retrospective rating insurance tables update	The purpose of this rule making is to update the retrospective rating insurance tables. When WAC 296-17B-010 was updated in 2017, L&I made a commitment to "repeat the studies that resulted in the hazard group assignments and changes to retrospective plan tables" (WSR 17-12-020). The proposed changes will maintain equity and fairness in the retrospective rating program.	4/20/22 22-09-085	6/20/23 23-13-094	Anticipate filing 8/22/23	Jessica Nau Retrospective Rating 360-902-5694

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296-15	Self-insured good faith and fair dealing duty and penalties (SHB 1521 implementation)	The purpose of this rule making is to implement SHB 1521, which adds a duty of good faith and fair dealing for self-insured municipal and certain private sector firefighter employers. The rules will define factors for determining base penalty amounts and the amount of multipliers added to the base penalty. The rules will also define good faith and fair dealing. The rules may address withdrawal of certification.	Anticipate filing September 2023	To be determined	To be determined	Starla Treznoski Self-Insurance 360-902-6901