

WSR 24-04-026

AGENDA

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed January 29, 2024, 1:55 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 L&I 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 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
January 1 - June 30, 2024**

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)						
296-62 296-155	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 DOSH Standards Program 360-902-4758

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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 other sections.	1/23/18 18-03-162	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
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	To be determined	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 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.	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 rail yard 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	To be determined	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 the National Institute for Occupational Safety and Health CBRN self-contained breathing apparatus 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	1/23/24 24-03-149	Anticipate filing 4/16/23	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 protect 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 3/5/24	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
To be determined	Safety standards for quotas at warehouse distribution centers (2SHB 1762 implementation)	The purpose of this rule making is to implement 2023's 2SHB 1762, codified under chapter 49.84 RCW, which addresses protections for employees at warehouse distribution centers who are subject to quotas. In part, chapter 49.84 RCW includes requirements enforced under the Washington Industrial Safety and Health Act, chapter 49.17 RCW.	10/11/23 23-21-059	Anticipate filing 3/5/24	Anticipate filing 5/21/24	Ryan Allen DOSH Standards Program 360-902-4758

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296-880	Unified safety standards for fall protection	The purpose of this rule making is to amend sections of rule in order to be at least as effective as OSHA under the Washington state plan and to provide additional worker protections. This rule making will consider changes to sections of the current rule that address leading edge work, safety monitor system requirements, and roofing activity on low pitched roofs.	N/A	Anticipate filing 2/6/24 (CR-105)	Anticipate filing 4/30/24	Ryan Allen DOSH Standards Program 360-902-4758
To be determined	Training and certification program— Application of fire-resistant materials (SHB 1323 implementation)	Rule making is anticipated to implement the provisions of SHB 1323 (chapter 145, Laws of 2023) related to requiring a training and certification program for individuals who apply fire-resistant materials.	Anticipate filing 2/6/24	Anticipate filing 9/3/24	Anticipate filing 11/19/24	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.	N/A	Anticipate filing April 2024 (CR-105)	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
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 establish inspection procedures and enforcement policies related to calculating penalties when OIR 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	Ryan Allen DOSH Standards Program 360-902-4758
To be determined	Prevent musculoskeletal injuries and disorders in certain risk classifications (ESSB 5217 implementation)	Rule making is anticipated to implement the provisions of 2023's ESSB 5217 related to regulating certain industries and risk classifications to prevent musculoskeletal injuries and disorders. ESSB 5217 directs L&I to annually publish a list of industries and risk classes eligible for rule making based on the criteria in ESSB 5217 and a high priority list of those most likely to be selected for new rules. This rule making will cover one industry or risk class from the high priority list published in November 2023.	To be determined	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758
296-27	Improving illness and injury tracking	Rule making is anticipated to update Washington's rule regarding illness and injury tracking and reporting to align with recent updates from OSHA.	To be determined	To be determined	To be determined	Ryan Allen DOSH Standards Program 360-902-4758

Division: Field Services and Public Safety

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296-150F	Factory assembled structures: Factory-built housing and commercial structures (implementation of E3SHB 1257, HB 1486, ESSB 5383)	The purpose of this rule making is to update the rule regarding factory-built housing and commercial structures, to include panelized construction. This rule making will include intent to make the rule related to E3SHB 1257 Energy efficiency, HB 1486 Delegation of authority, and ESSB 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
296-400A	Plumber certification rule—Phase 3	The purpose of this rule making is to consider amendments under the plumber certification rule 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 the plumbing rule.	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 rule (code adoption)	The purpose of this rule making is to amend the rule based on the 2023 edition of the National Fire Protection Agency (NFPA) 70, the National Electrical Code (NEC), and other related codes for electrical. The electrical program reviewed the existing rule and 2023 NEC (NFPA 70-2023) to update the rule for consistency with the latest national safety standards and industry practice. The 2023 edition of the code presents the latest comprehensive regulations for electrical wiring, overcurrent protection, grounding, and installation of equipment.	4/4/23 23-08-066	12/5/23 23-24-084	Anticipate filing 2/20/24	Meagan Edwards Field Services and Public Safety 360-522-0125
296-150P 296-150R 296-49A	Factory assembled structures (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). The changes would affect L&I's FAS advisory board, and distributing inspection insignia to manufacturers of recreational vehicles. L&I is also reviewing the FAS advisory board rule, chapter 296-49A WAC, to consider updates, clarification, housekeeping, and other amendments.	9/19/23 23-19-075	Anticipate filing 3/19/24	To be determined	Meagan Edwards Field Services and Public Safety 360-522-0125
296-104	Boiler rule and fee increases (fiscal year 2025)	The purpose of this rule making is to amend the boiler rule to, in part, ensure it is consistent with national boiler and unfired pressure vessel safety standards and industry practice. The changes affect safety codes, installer and clearance requirements, and fees for boilers and pressure vessels.	10/10/23 23-21-043	1/2/24 24-02-070	Anticipate filing 4/16/24	Meagan Edwards Field Services and Public Safety 360-522-0125

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296-200A	Contractor registration (2SHB 1534 Implementation—Phase 2)	The purpose of this rule making is to amend the contractor registration rule to implement 2SHB 1534 (chapter 213, Laws of 2023), which helps strengthen protections for consumers in the construction industry. Provisions of the law take effect July 1, 2024. The amendments affect the definitions, penalty and bond amounts, and fees for general and specialty contractors. The amendments are also necessary to support operating expenses of the contractor registration program.	10/10/23 23-21-052	Anticipate filing 2/20/24	Anticipate filing 4/30/24	Alicia Curry Field Services and Public Safety 360-902-6244
296-46B	Electrical fees increase (fiscal year 2025)	The purpose of this rule making is to increase the electrical fees by the fiscal growth factor of 6.40 percent. The fee increase is the maximum allowed by the state office of financial management for fiscal year 2025. A fee increase is needed to support increased operating expenses for inspections and other electrical program services, as the current fee levels are insufficient to cover current electrical program expenses. This rule making also proposes removing the fee for printed copies of the electrical laws and rule. The electrical program will no longer be providing printed copies, as electronic versions are available online for customers.	10/31/23 23-22-104	12/19/23 24-01-113	Anticipate filing 3/19/24	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
Division: Fraud Prevention and Labor Standards						
To be determined	Labor standards for quotas at warehouse distribution centers (2SHB 1762 implementation)	The purpose of this rule making is to implement 2023's 2SHB 1762, codified under chapter 49.84 RCW, which addresses protections for employees at warehouse distribution centers who are subject to quotas.	10/11/23 23-21-058	Anticipate filing 3/5/24	Anticipate filing 5/21/24	Reed Simock Fraud Prevention and Labor Standards 360-480-3237
296-127	Prevailing wage—Housekeeping	The purpose of this rule making is to update five rule sections to bring them into alignment with the statutes they help to interpret and enforce. Minor amendments planned for the following: WAC 296-127-010(9), 296-127-019, 296-127-140, 296-127-160, and 296-127-320.	N/A	Anticipate filing 3/5/24 (CR-105)	Anticipate filing 5/7/24	Reasa Pearson Fraud Prevention and Labor Standards 360-999-7226
296-128	Subminimum wage certificates	The purpose of this rule making is to repeal sections of rule related to issuing subminimum wage certificates to individuals with disabilities because the underlying statute, RCW 49.46.170, is no longer in effect. Repealing WAC 296-128-055 through 296-128-090.	N/A	To be determined (CR-105)	To be determined	Bridget Osborne Fraud Prevention and Labor Standards 360-902-5552
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 the proposed rule amendments for potential future rule making.	3/3/20 20-06-060	9/22/20 20-19-132 (withdrawn) 10/27/20 20-22-038 11/6/20 20-23-017	To be determined	Jo Anne Attwood Employer Services 360-902-4777
296-17 296-17A	Reporting and classification amendments for 2025	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.	Anticipate filing 5/21/24	Anticipate filing 8/20/24	Anticipate filing 11/19/24	Jo Anne Attwood Employer Services 360-902-4777
296-17 296-17B	Industrial insurance premium rates 2025	The purpose of this rule making is to establish the premium rates and experience rating parameters for calendar year 2025.	Anticipate filing 6/18/24	Anticipate filing 9/17/24	Anticipate filing 11/27/24	Jo Anne Attwood Employer Services 360-902-4777
296-23	Naturopathic physician services	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.	11/21/23 23-23-156	Anticipate filing 2/6/24	Anticipate filing 5/21/24	Megan Lemon 360-902-5161 Tina Vorse 360-902-5934 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.	12/5/23 23-24-080	Anticipate filing 3/19/24	Anticipate filing May 2024	Megan Lemon 360-902-5161 Marc Hobbs 360-902-4244 Health Services Analysis
296-20	Physician assistant billing procedure	The purpose of this rule making is to remove the requirement that physician assistants be paid 90 percent of the fee schedule value for procedures they perform and instead allow them to be paid up to the maximum fee listed on the fee schedule.	Anticipate filing 6/4/24	Anticipate filing 8/20/24	Anticipate filing 10/22/24	Megan Lemon 360-902-5161 Marc Hobbs 360-902-4244 Health Services Analysis

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296-23	Independent medical examination (IME) recording notification process and accompanying person	The purpose of this rule making is to amend the rule to define the recording notification process for when a worker wants to record IMEs requested by L&I and self-insured employers. SHB 1068 (chapter 166, Laws of 2023) allows a worker to audio and visually record an IME, and includes an observer may be present for all examinations with the worker. The updated statute, RCW 51.36.070, requires L&I create sections in rule 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 independent medical examination.	6/20/23 23-13-096	1/2/24 24-02-068	Anticipate filing 3/26/24	Suzy Campbell Legal Services 360-902-5003
296-14	Pension discount rate 2024	The purpose of this rule making is to lower the pension discount rate (PDR) to better align with the rate of return for long-term treasuries for self-insured pensions. The PDR is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. This rule making proposes to lower the PDR for self-insured employers from 5.6 to 5.5 percent effective April 1, 2024.	8/1/23 23-16-116	10/17/23 23-21-085	1/2/24 24-02-069	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.	To be determined	To be determined	To be determined	Jami Lifka Office of the Medical Director 360-902-4941 Jami.Lifka@Ln.i.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

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296-15	Self-insured good faith and fair dealing (SHB 1521 implementation)	The purpose of this rule making is to implement SHB 1521 (chapter 293, Laws of 2023), which adds additional applications of the duty of good faith and fair dealing, as well as criteria for determining appropriate penalties for violations. Good faith and fair dealing in this context refers to the administration of workers' compensation benefits. The rule sections on this subject seek to protect the best interests of impacted workers by ensuring they are free from coercion or other unfair practices regarding industrial insurance benefits that may be due to them. This rule making will establish a "good faith and fair dealing" standard for self-insured employers and their third-party administrators.	9/5/23 23-18-076	Anticipate filing 2/20/24	Anticipate filing 4/30/24	Nicole Mitchell Self-Insurance 360-902-6833