

Trenching Rescue & Excavation Plan Stakeholder Meeting – May 14, 2021

The Rulemaking Process

Why We're Considering Rulemaking Today

Discussion Draft

Questions/Comments





The Basics

- L&I/DOSH has broad rulemaking authority under the WISHA act and exists in partnership with OSHA
- The Administrative Procedures Act (APA) mandates a 3-step rulemaking process
- State Agencies are required to conduct a Cost Benefit Analysis (CBA) and a Small Business Economic Impact Statement (SBEIS) for most rules
- Public participation encouraged



Why Do We Do Rulemaking?

- Federal Law (OSHA)
- Washington Statute
- State Court Decision
- Governor's Order
- Public Petition
 - Entity - Labor/Industry
 - Individual petition
- Internal Review of Rules and Accident Investigations to determine areas for improvement

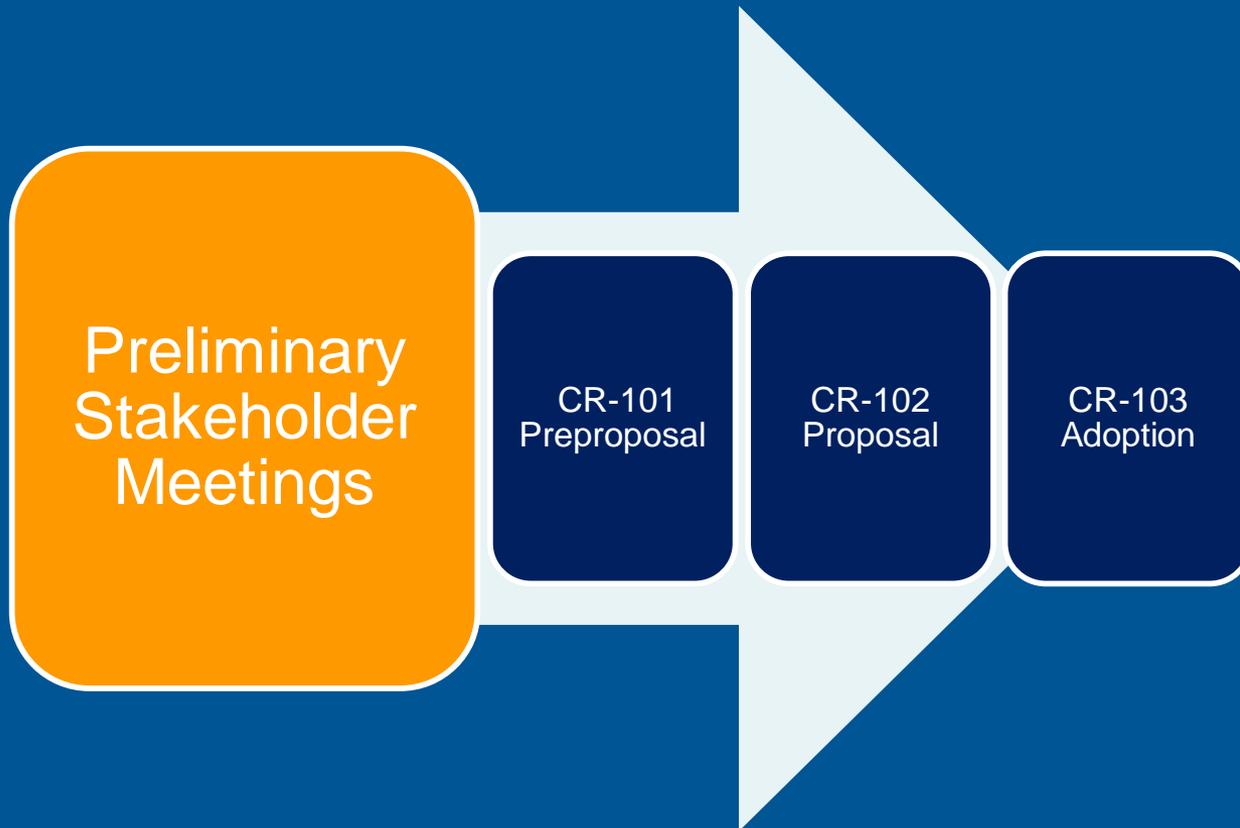


Partners in the rulemaking process

- OSHA
- DOSH Standards
- DOSH Technical Services
- L&I Research and Data Services (Economists)
- GAPD –Governmental Affairs and Policy Division
- AGO – Attorney General’s Office
- Other federal/state agencies
- Workers
- Industry/Trade Groups
- Labor Unions



How We Do Rulemaking – The Rulemaking Process





CR-101 form
package filed

The start of rulemaking

- Public notified of intent of possible rulemaking via *WA Register*
- Public comments solicited from stakeholders
- Proposed rule drafted, reviewed internally
- Economic impact survey conducted, if needed



CR-102 form package filed

Public notice of proposed rule & public hearing

- Public hearings held
- Public comments collected and reviewed
- Response to public comments prepared
- Proposed rule language finalized



CR-103 form package filed

Filing the CR-103 means the rule is now adopted

- Finalized rule that incorporates agency consideration of public comments received signed by Agency Director
- Rule adopted upon filing CR-103 with Code Reviser
- Public notified of rule adoption via *WA Register*
- Rule becomes effective on its effective date (usually 30 days after adoption, but sometimes effective dates are delayed to mitigate impact to business)



CR-101:

- Public notified of intent of possible rulemaking via *WA Register*
- Public comments solicited from stakeholders
- Proposed rule drafted, reviewed internally
- Economic impact survey conducted, if needed
- CBA & SBEIS results analyzed, Preliminary CBA & SBEIS prepared

CR-102:

- Public given notice of proposed rulemaking & public comment hearings
- Public hearings held
- Public comments collected and reviewed
- Response to public comments prepared
- Proposed rule language and economic analyses finalized

CR-103:

- Order adopting the rule filed
- Rule adopted
- Rule goes into force on its effective date



Other Possible Rulemaking Scenarios

- CR-103E - Emergency Rulemaking
- CR-105 - Expedited Rulemaking



What does all this mean for us?

- Even the most simple rulemaking projects generally take a year or more to complete
- The more extensive or controversial the rule changes are, the longer the process takes
- Rulemaking projects initiated by OSHA mandate or Washington statute generally take precedence over others



Why we're considering rulemaking today



INJURY NARRATIVE

Pipe Layer Severely Injured in Trench Collapse

Industry: Water and Sewer Line Construction

Task: Measuring Trench Depth

Occupation: Pipe Layer

Type of Incident: Trench Collapse





Why we're considering rulemaking today



FATALITY NARRATIVE

Pipelayer Dies when Trench Wall Collapses

Industry: Site Preparation Contractors

Task: Replacing residential sewer line

Occupation: Pipelayer

Type of Incident: Trench wall collapse





Why we're considering rulemaking today



NEWS Communication Services
www.lni.wa.gov/news-events 360-902-5400

Three companies fined for fatal trench collapse at Rainier wind farm

July 16, 2020

#20-024

TUMWATER — Three companies have been fined more than a half million dollars in connection with a January trench collapse at a wind farm site near Rainier that killed one worker and seriously injured another.

A Washington State Department of Labor & Industries (L&I) investigation found numerous safety violations in connection with the incident. As a result, L&I has cited RES System 3 LLC for eight violations, and RES America Construction Inc. for six violations related to the fatal incident at the Skookumchuck Wind Farm site. A third company, GEMS, a medical service contractor, has been cited for one serious violation.



Why we're considering rulemaking today

Washington's Most Recent Trenching Fatality

“This incident is heartbreaking and frustrating. This fatality and the hospitalization of a worker were completely preventable. Trenching at this depth, in the dead of winter after days of rain, in unstable soil with no trench box, was a recipe for disaster. These violations were flagrant, and they nearly led to a multiple-fatality incident.”

– **Anne Soiza**, Assistant Director, DOSH (retired)



Why we're considering rulemaking today

Trenching Fatalities

- Average of **19 worker fatalities** nationwide each year, with **24 occurring in 2018***
- **2 fatalities in WA** within past 5 years

*Bureau of Labor Statistics (BLS 2019)



Why we're considering rulemaking today

DOSH Consultation Data 2016-2020

WAC 296-155-655 General Protection Requirements

Consultation:

156 violations

- 14 General

- 142 Serious



Why we're considering rulemaking today

DOSH Enforcement Data 2016-2020

WAC 296-155-655 General Protection Requirements

Enforcement:

327 violations

- 22 General
- 1 Repeat General
- 278 Serious
- 20 Repeat Serious
- 5 Willful Serious
- 1 Failure to Abate Serious



Why we're considering rulemaking today

DOSH Consultation Data 2016-2020

WAC 296-155-657 Requirements for protective systems

Consultation:

105 Violations

- 7 General
- 98 Serious



Why we're considering rulemaking today

DOSH Enforcement Data 2016-2020

WAC 296-155-657 Requirements for protective systems.

Enforcement:

260 Violations

- 9 General
- 227 Serious
- 19 Repeat Serious
- 5 Willful Serious



Why we're considering rulemaking today

- WAC 296-155-035(9)

You must ensure prompt and safe removal of injured employees from elevated work locations, trenches and excavations prior to commencement of work.



Why we're considering rulemaking today

- WAC 296-155-110 Accident Prevention Program
 - In Writing
 - Tailored to particular operations
 - Proper actions to take in an emergency
 - Review of the practices necessary to perform job assignments in a safe manner
 - Walk around safety inspections
 - Weekly Safety Meetings
- PART N - EXCAVATION, TRENCHING, AND SHORING (WAC 296-155-650 - WAC 296-155-66411)



And finally...





The L&I/DOSH Rulemaking Process

Questions?





DOSH Rulemaking Information

- <https://lni.wa.gov/rulemaking-activity/>

Washington State Department of
Labor & Industries

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Safety & Health Claims Patient Care Insurance Workers' Rights Licensing & Permits

Home >

Rulemaking Activity at L&I

[Browse all L&I WAC Title 296 Rules \(app.leg.wa.gov\)](#)

Title or number (296-XXX) **SEARCH** Topic All Status All

[Learn about the rulemaking process and terms](#) [Semi-annual rules development agenda](#)



Trenching Rescue & Excavation Plan Rulemaking

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