



# PROPOSED RULE MAKING

## CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

**Agency:** Department of Labor and Industries

- Preproposal Statement of Inquiry was filed as WSR 11-15-063; or
- Expedited Rule Making--Proposed notice was filed as WSR; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

**Title of rule and other identifying information:** Chapter 296-900 WAC, Administrative Rules (Abatement).

**Hearing location(s):**

1 p.m., November 30, 2011  
DoubleTree by Hilton – Spokane City Center  
322 North Spokane Falls Court  
Spokane, WA 99201

9 a.m., December 2, 2011  
Department of Labor and Industries – Tumwater – S117 and S118  
7273 Linderson Way SW  
Tumwater, WA 98501

**Submit written comments to:**

Name: Devin Proctor  
Address: PO Box 44620  
Olympia, WA 98504  
e-mail: devin.proctor@lni.wa.gov  
fax: (360) 902-5619 by 5 p.m. on December 7, 2011

**Date of intended adoption:** January 3, 2012  
(Note: This is NOT the effective date)

**Assistance for persons with disabilities:** Contact  
Beverly Clark by November 16, 2011  
(360) 902-5516 or beverly.clark@lni.wa.gov

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

During the 2011 session, the Legislature updated state law regarding abatement of serious safety and health violations during appeal of a Washington Industrial Safety and Health Act citation. Engrossed Substitute Senate Bill (ESSB) 5068 directs the Department to write these rules. The rules will establish that an appeal of any violation classified and cited as serious, willful, repeated serious violation or failure to abate a serious violation does not stay abatement dates and requirements. The rules will allow an employer to request a stay of abatement through submission of a notice of appeal. The rules also include administrative updates to comply with ESSB 5068. See Attachment 1.

**Reasons supporting proposal:** The Washington State Legislature mandates that the Division of Occupational Safety and Health enact these rules.

**Statutory authority for adoption:** RCW 49.17.010, 49.17.040, 49.17.050 and 49.17.060.

**Statute being implemented:** RCW 49.17.040

**Is rule necessary because of a:**

- Federal Law?  Yes  No
  - Federal Court Decision?  Yes  No
  - State Court Decision?  Yes  No
- If yes, CITATION:

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: October 18, 2011**

**TIME: 9:23 AM**

**WSR 11-21-079**

**DATE**  
October 18, 2011

**NAME**  
Judy Schurke

**SIGNATURE**

**TITLE**  
Director

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

None

**Name of proponent:** Department of Labor and Industries

- Private
- Public
- Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting	Tracy Spencer	Tumwater, Washington	(360) 902-5530
Implementation	Michael Silverstein	Tumwater, Washington	(360) 902-4805
Enforcement	Michael Silverstein	Tumwater, Washington	(360) 902-4805

**Has a small business economic impact statement been prepared under chapter 19.85 RCW?**

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No. Explain why no statement was prepared.

No small business economic impact statement is required because this rule is enacting Engrossed Substitute Senate Bill 5068 in which the Washington State Legislature directed the department to complete this rulemaking. The department's proposed rules are subject to the Regulatory Fairness Act, but they do not require a small business economic impact statement because the proposed changes are exempt by law [see RCW 19.85.025 referencing RCW 34.05.310 (4)].

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No: Please explain:

No cost-benefit analysis is required because this rule is enacting Engrossed Substitute Senate Bill 5068 in which the Washington State Legislature directed the department to complete this rulemaking. The department's proposed rules are subject to the Regulatory Fairness Act, but they do not require a cost-benefit analysis because the proposed changes are exempt by law.

**CR 102 RULE-MAKING ORDER (RCW 34.05.320)**

Department of Labor and Industries

Division of Occupational Safety and Health

CR-102 Filing Date: October 18, 2011

Hearing Dates: November 30 and December 2, 2011

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**Attachment (1)**

(Purpose Statement)

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**NEW SECTIONS:**

**WAC 296-900-17006 Stay of abatement date request**

- The process employers would use to request a stay of abatement is located in this section.

**AMENDED SECTIONS:**

**WAC 296-900-170 Appeals.**

- Added new section 296-900-17006 Stay of abatement date request.

**WAC 296-900-17005 Appealing a citation and notice (C&N).**

- Added language relating to requests for stay of abatement. Made administrative changes to language for clarity and consistency.

**WAC 296-900-17010 Appealing a corrective notice of redetermination (CNR).**

- Added language that requires employers to request a stay of abatement. Made administrative change to language for clarity and consistency.

**WAC 296-900-17015 Posting appeals.**

- Added language "or stay of abatement date request".
- Changed WISHA to DOSH.