



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Labor and Industries

Permanent Rule Only

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) July 1, 2012 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose:

During the 2011 legislative session, the Legislature passed Chapter 91, Laws of 2011 (Engrossed Substitute Senate Bill 5068) regarding the abatement of serious safety and health violations during appeal of a Washington Industrial Safety and Health Act citation. Engrossed Substitute Senate Bill (ESSB) 5068 requires employers to abate violations classified and cited as serious, willful, repeated serious or failure to abate a serious violation during an appeal unless a stay of abatement is granted by the Department of Labor and Industries (department) or the Board of Industrial Insurance Appeals (BIIA). The department conducted two stakeholder meetings to gather input from business and labor stakeholders for use in developing the draft rules. **See Attachment 1.**

Citation of existing rules affected by this order:

Repealed:
 Amended: WACs 296-900-170, 296-900-17005, 296-900-17010, and 296-900-17015
 Suspended:

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

Other authority : Chapter 91, Laws of 2011 (Engrossed Substitute Senate Bill 5068)

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 11-21-079 on October 18, 2011.

Describe any changes other than editing from proposed to adopted version:
See Attachment 2.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone _____
 Address: _____ fax _____
 e-mail _____

Date adopted:

January 3, 2012

NAME (TYPE OR PRINT)

Judy Schurke

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 03, 2012

TIME: 8:29 AM

WSR 12-02-055

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

| | | | | | | |
|---|-----|----------|---------|----------|----------|-------|
| Federal statute: | New | _____ | Amended | _____ | Repealed | _____ |
| Federal rules or standards: | New | _____ | Amended | _____ | Repealed | _____ |
| Recently enacted state statutes: | New | <u>1</u> | Amended | <u>4</u> | Repealed | _____ |

The number of sections adopted at the request of a nongovernmental entity:

| | | | | | |
|-----|-------|---------|-------|----------|-------|
| New | _____ | Amended | _____ | Repealed | _____ |
|-----|-------|---------|-------|----------|-------|

The number of sections adopted in the agency's own initiative:

| | | | | | |
|-----|-------|---------|-------|----------|-------|
| New | _____ | Amended | _____ | Repealed | _____ |
|-----|-------|---------|-------|----------|-------|

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

| | | | | | |
|-----|----------|---------|----------|----------|-------|
| New | <u>1</u> | Amended | <u>4</u> | Repealed | _____ |
|-----|----------|---------|----------|----------|-------|

The number of sections adopted using:

| | | | | | | |
|---------------------------------------|-----|----------|---------|----------|----------|-------|
| Negotiated rule making: | New | _____ | Amended | _____ | Repealed | _____ |
| Pilot rule making: | New | _____ | Amended | _____ | Repealed | _____ |
| Other alternative rule making: | New | <u>1</u> | Amended | <u>4</u> | Repealed | _____ |

CR 103 RULE-MAKING ORDER (RCW 34.05.320)

Department of Labor and Industries
Division of Occupational Safety and Health
CR-103 Filing Date: January 3, 2012
Effective Date: July 1, 2012
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Attachment 1
(Purpose Statement)

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.

Changes other than editing from proposed to adopted version

Describe any changes other than editing from proposed to adopted version:

As a result of written and oral comments received, the following sections are being changed as indicated below:

CHANGES TO THE RULES (Proposed rule versus rule actually adopted):

WAC 296-900-17006 Stay of abatement date request

- In subsection (3), deleted the sentence “DOSH will make its determination based on what a reasonable person would conclude based on the same circumstances.”
- In subsection (6), “stay of violation date” was changed to “stay of abatement date”.

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

- Clarification that the requirement to appeal a CNR within fifteen working days after it was received applies to employers as well as employees and their representatives.