



# 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) \_\_\_\_\_ (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:**

The Self-insurance Section within the Department of Labor and Industries is amending Section 296-15-266 WAC. The amendments define the circumstances under which the department will consider assessing a penalty for an unreasonable delay of benefits, and the process of this penalty request. Title 51 does not define the meaning of "benefit" or clearly state what constitutes a request for penalty. As a result, there are a number of ways to describe entitlements and whether referred to as compensation, services, benefits, or payments, all entitlements due the worker under the Act may constitute benefits due the worker based on the *Coston* decision. This rule establishes general guidance and procedures as well as necessary clarifications on requesting and assessing penalties against self-insured employers for unreasonable delay of benefits, all of which are originated or required by the industrial insurance law under Title 51 RCW. The rule will help create a level playing field for all other employers and discourage non-compliant behaviors. It will also benefit injured workers in that more timely benefit payments can be ensured for those who are entitled, which is critical for them and their families. The procedures and guidance established by this rule will help eliminate ambiguity that the department may encounter when the situation arises in the future.

**Citation of existing rules affected by this order:**

Repealed: N/A  
Amended: WAC 296-15-266  
Suspended: N/A

**Statutory authority for adoption:** RCW 51.04.020 and RCW 51.48.017

**Other authority :**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 14-21-157 on October 21, 2014.

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

The Supplemental CR-102 amended the proposal in response to comments received during the initial comment period to:

- Clarify when a benefit is considered unreasonably delayed,
- Remove language that is vague or imprecise,
- Move loss-of-earning power to its own sub-section in the penalties rule,
- Remove requirement for employer to notify department when payments are denied,
- Add a requirement for employer to notify the department when there is a worker or medical provider dispute over payment denial, and
- Provide an additional 5 working days to employer response time within the 30 day requirement for responding to penalties, etc.

One change was made following the public hearing to the Supplemental CR-102. Subsection (1)(d) was modified to indicate self-insurer's must respond within fourteen days to written requests for authorization of emergent or life-saving treatment.

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

Name: Maggie Leland	phone (360) 902-4504
Address: Department of Labor and Industries	fax (360) 902-4204
PO Box 44001	e-mail brez235@lni.wa.gov
Olympia, WA 98504-4001	

**Date adopted:**

December 23, 2014

**NAME (TYPE OR PRINT)**

Joel Sacks

**SIGNATURE**

**TITLE**

Director

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: December 23, 2014**

**TIME: 8:26 AM**

**WSR 15-01-162**

(COMPLETE REVERSE SIDE)

**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:**

<b>Federal statute:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Federal rules or standards:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Recently enacted state statutes:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

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

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
--	-----	----------	---------	----------	----------	----------

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

	New	<u>0</u>	Amended	<u>1</u>	Repealed	<u>0</u>
--	-----	----------	---------	----------	----------	----------

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

	New	<u>0</u>	Amended	<u>1</u>	Repealed	<u>0</u>
--	-----	----------	---------	----------	----------	----------

**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Pilot rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Other alternative rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>