

CONCISE EXPLANATORY STATEMENT
Chapter 296-900 WAC Administrative Rules – Penalty Calculations

Public Hearings: March 10th, 11th, 13th, 16th, 18th and 20th, 2015

Adoption: June 9, 2015

Effective Date: September 1, 2015

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I. Purpose of Rulemaking

This penalty calculation rulemaking by the Division of Occupational Safety and Health (DOSH) is intended to align with the Occupational Safety and Health Administration's (OSHA) recent direction to Washington State to increase its overall penalty amounts to ensure that DOSH's rule is at least as effective as OSHA's, while imparting a more consistent and fair application of the penalties calculated. OSHA requires that the average penalty for serious violations (private sector employers only) in total and by size of the employer be within +/- 25% of the three-year national average).

Currently, Washington State's average penalty amounts ranks 45th in the nation for overall average penalty amounts, which is unacceptable to OSHA. Failure to adopt rules to respond to the change in OSHA policies and to meet its new mandated measures could result in the suspension of Washington's state plan approval and funding.

A. Background

OSHA changed its policies for calculating penalties in October, 2010. In October, 2012, OSHA updated the States Activities Mandated Measures (SAMM) Report to require state plan states to meet new measures for calculating penalties. 21 states including Washington operate complete job safety and health programs on their own. As required by the Occupational Safety and Health Act of 1970, OSHA-approved state plans must be at least as effective as the federal OSHA program. Regarding the administrative penalty rule, OSHA has updated the State Activities Mandated Measures (SAMM) report, requiring that state plan's average current penalty for a serious violation overall and by employer size be within 25% of the federal average. A serious violation is one where there is substantial probability that death or serious physical harm could result from employee exposure to a hazard and must carry a penalty under national and state laws. DOSH's statutory authority for penalty limits is identical to OSHA.

As of federal fiscal year 2013, the DOSH average penalty assessed for a serious violation was significantly lower than the national average (see table below). This level of variance is unacceptable to OSHA. In October 2012, OSHA directed the department to take corrective action in order to comply with the measure. Consequently L&I must change the rule for how it assesses monetary penalties.

Specifically, OSHA's measures require L&I's average current penalty for serious violations be within +/- 25% of the three-year national average and by employer size for private sector employers only. Below are the penalty amounts assessed in Washington by employer size in comparison to the OSHA mandated measures.

**Average Current Penalty per Serious Violations (private sector)
State Activity Mandated Measures (SAMMs)
Washington State
November 12, 2013**

| Number of Employees | WA Measure: Oct 1, 2012 to Sept. 30, 2013 | WA Measure: Oct 1, 2013 to Nov, 2013 | OSHA Standard | Allowable range: +/- 25% | WA percent of OSHA |
|---------------------|---|--------------------------------------|---------------|--------------------------|--------------------|
| Total (1-250+) | \$ 761 | \$ 949 | \$ 1447 | \$1085 – 1158 | 66% |
| 1 to 25 | \$ 529 | \$ 776 | \$ 1140 | \$855 – 1425 | 68% |
| 26 to 100 | \$ 819 | \$ 897 | \$ 1428 | \$1071 – 1785 | 63% |
| 101 to 250 | \$ 1295 | \$ 1353 | \$ 1955 | \$1466 – 2444 | 69% |
| 251+ | \$ 2055 | \$ 2235 | \$ 2495 | \$1871 – 3119 | 90% |

B. Summary of the rulemaking activities

L&I began conversations with the WISHA Advisory Committee in November 2012. A “discussion draft” of possible rule changes was provided to the WISHA Advisory Committee in September 2013. Three statewide public meetings were held in February 2014 to gather stakeholder input on the discussion draft. On April 22, 2014, L&I filed the (CR-101) pre-proposal statement of inquiry. On June 6, 2014, a preliminary rule draft was sent to stakeholders via a listserv for occupational safety and health rules. The information was also posted on the L&I website. Three statewide public meetings were held in May-June 2014 to get input on the preliminary rule draft. Based on stakeholder input, additional changes were incorporated and a second preliminary rule draft was sent to stakeholders via the listserv and three more statewide public meetings were held. Additionally, outreach was provided to several business and labor organizations. The proposed rule language (CR-102) was filed on February 3, 2015. Six public hearings were held across the state during March, 2015. The comment period was scheduled to end on March 31, 2015 but was extended until April 14, 2015.

II. Changes to the Rules (Proposed rule versus rule adopted):

WAC 296-900-140 Monetary penalties.

- Removed the word “rate” from the definition of “probability.”

WAC 296-900-14010 Base penalties.

- Clarified the language in Table 7. Removed “Gravity Based Penalty” from the title and added the word “penalty” at the end of the title. Also removed “Gravity based” and added “base penalty” within the table.

- Clarified the language after Table 7, it now reads, “A penalty is not applied to first time general violations. The base penalty is used to calculate the penalty for willful, repeat, or failure to abate general violations.”

WAC 296-900-14015 Base penalty adjustments.

- Clarified the language in Table 8, added the word “previous” in the first and third row of the table.
- Clarified the language in the first bullet after Table 8, it now reads, “History is based on the prior three years statewide.”

WAC 296-900-14020 Increases to adjusted base penalties.

- Clarified the language after Table 12, it now reads, “History is based on the prior three years.”
- Removed the word “adjustment” from Table 13 and replaced it with the word “reduction.”
- Added the words “The adjusted base penalty may be increased as follows:” in Table 15.

WAC 296-900-180 Definitions.

- Removed the word “rate” from the definition of “probability.”

III. Summary of Comments Received and Department Response

| General Comments | Department Response |
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| <p>How does the department know that this rulemaking effort will get us to the desired/projected average values? If this rulemaking effort results in missing the mark, what is DOSH's plan to address the shortcoming or overage?</p> | <p>Currently OSHA uses Washington's penalties as an important measuring tool for the effectiveness of the DOSH program. OSHA also looks at the reduced amount of injuries as a result of more deterrent penalty structures. DOSH has used reported inspection data to estimate the increase needed to meet OSHA's requirements. The current data shows that these increases should put the DOSH penalties with the range defined by OSHA which is a plus or minus 25% of OSHA penalties. This penalty calculation rulemaking by DOSH is intended to enhance consistency in penalty amounts and increase the average penalty amounts overall.</p> |
| <p>We understand that this endeavor to change the DOSH penalty structure is at the behest of U.S. Occupational Safety and Health Administration (OSHA). We know the DOSH must be at least as effective as OSHA, but the biggest question in our minds is, "Are penalty amounts the correct metric to measure the effectiveness of a state's safety program?" It appears OSHA wants to focus almost exclusively on how Washington penalties compare to the national average. Yet in the past both the Government Accountability Office and the Department of Labor's Office of Inspector General have raised questions about how OSHA measures the effectiveness of State OSHA's. We are concerned that without a set of agreed-to, corresponding metrics, the goals of having an accurate comparison of state programs and incentivizing workplace safety are compromised. For example, significant differences exist between the inspections commonly conducted by OSHA (typically employers of 25 or more workers) and those conducted by DOSH (typically employers of 10 or more workers), resulting in different types of penalties, penalty amounts, and adjustments. A straight comparison of those two</p> | <p>Thank you for your comment. Currently OSHA uses Washington's penalties as an important measuring tool for the effectiveness of the DOSH program. OSHA also looks at the reduced amount of injuries as a result of more deterrent penalty structures.</p> |

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| <p>universes is not appropriate. We firmly believe that other metrics, such as injury and fatality rates, need to be taken into account to determine state OSHA effectiveness. Based on data from 2008-12, Washington employers have been consistently safer than the national average based on fatalities and have already met or exceeded the 2016 goals for the reduction of fatalities and acute hospitalizations. If these factors were taken into account, we believe they would demonstrate the overall safety of Washington's employers and DOSH system. We ask you to continue conversations with OSHA, even after the adoption of these rules, to encourage OSHA to develop a more accurate, holistic, and comprehensive measure of effectiveness that includes more than just penalty amounts.</p> | |
| <p>While we fail to see evidence that an increase in penalties, in and of itself, would result in safer workplaces, we understand that the task at hand is to change our penalty structure. We prefer the current structure because it meets the safety needs of employers and employees.</p> | <p>Washington's penalties are ranked 45th (FFY 2013) in the nation for average amount. Both OSHA and DOSH believe a higher average penalty amount will have a greater deterrent effect and will benefit employees and employers in reduced injuries related to safety hazards by making occupational safety and health a primary concern of employers.</p> |
| <p>How is DOSH going to address training of its personnel to insure this change is communicated and used consistently? I have already heard misinformation that is being shared by enforcement staff to employers now. One enforcement staff person told an AGC employer that they should be ready for triple the penalties beginning in September, 2015. One of the most important parts of rule changes is in notification to those affected. If the only voice employers are hearing is misinformed DOSH personnel, it could quickly tarnish the hard work of the department on this rule. We feel that clear outreach information needs to be made available to all employers and solid training for all DOSH staff.</p> | <p>Currently the DOSH compliance manual is being rewritten and updated to include the new penalty calculation structure. DOSH internal training department is currently designing training to aid the compliance staff in transitioning to the new penalty structure.</p> |
| <p>The Carpenters have continued to, in the prior meetings on this matter, have expressed a concern that this is an example of the tail wagging the dog. OSHA is looking surly at the impact of the initial</p> | <p>Thank you for your comment. Currently OSHA uses Washington's penalties as an important measuring tool for the effectiveness of the DOSH program. OSHA also looks at</p> |

penalty assessed are not looking at the entire picture that could change the behavior of employers out there in their workplaces. Because they well know, the entire process of issuing a citation includes a mandatory right to appeal. Many employers do exercise that right to appeal. If you at the state's and the federal statistics themselves, in those areas where the penalties are exceptionally higher, or in the excess of the \$1400 penalties, you find that the appeal rate, that is the litigation rate for those violations becomes much higher than it is in Washington. Also the end result of that litigation is that there are violations that are dismissed, changed from serious to general. As a result of both of those actions penalties go down significantly. We're not suggesting that this puts Washington at the end of the game because they have fewer appeals, fewer changes, and fewer reductions identical to the national average. But we're much closer to the national average. I think that the way the federal government should have approached this was where are you at the end of the game than at the beginning of the game. Because what that does is it drives up the litigation costs. I'm also a member of the Washington State Bar Association and I've been involved in trial work for 15 years. And seeing that those costs in many instances can delay compliance and affect the workforce. Compliance may or may not be achieved while the case is in litigation and those compliance resources, the boots on the ground that were involved in the initial inspection, end up being in the courthouse, testifying in front of judicial authorities, instead of going out there and doing additional inspections. So for those reasons we just want to say that the Carpenters want to go on record, and that we would support the department if they need to seek an increase in staffing resources as a result of, what we think could be a possibility, that litigation increases; and you end up having to shift boots on the ground into litigation. We would support that then an equalization of that by asking for additional resources. Because really where the boots on the ground is where the difference is made. And this state is

the reduced amount of injuries as a result of more deterrent penalty structures.

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| <p>still the one state that actually does a study to determine what the effect of boots on the ground is, whether it's compliance or consultation. So to take resources away from making on-site visits just to increase the penalties isn't getting to where we need to go, which is to reduce the number of injuries and illnesses.</p> | |
| <p>We regret that OSHA measures programs against the penalty at the time of citation issuance rather than the penalty upon exhaustion of appeals. Washington has one of the highest, if not the highest rate of confirmation of citation and penalty of all programs. Measuring against the penalty at the exhaustion of appeals brings Washington much closer to compliance with the overall "ending penalty," albeit still lower.</p> | <p>Thank you for your comment. Currently OSHA uses Washington's penalties as an important measuring tool for the effectiveness of the DOSH program. We acknowledge that regardless of how Washington's current penalties are measured against OSHA we are still not meeting the mandate measures and we need to adjust our penalty structure. OSHA also looks at the reduced amount of injuries as a result of more deterrent penalty structures.</p> |
| <p>Washington remains the only program that has done scientific measurement (by SHARP) of the effectiveness, that is, reduction of injuries and occupational illnesses of its compliance activities. The published reports show a direct correlation between visits and effectiveness. Because the Washington studies have demonstrated that effectiveness can be shown regardless of whether the visit is compliance or consultation, Washington should have challenged the OSHA direction. Usage of the initial penalty is merely an assumption of effectiveness by OSHA that has no scientific support. Furthermore, if the increase in initial penalties spurs additional appeals that involve the participation of inspection staff, the end result will be to reduce field office visits and the effectiveness of DOSH compliance. If this does occur, the state Building Trades supports a budget request to replace inspection resources.</p> | <p>Currently Washington's penalties are ranked 45th (FFY 2013) in the nation for average amount. Both OSHA and DOSH believe a higher average penalty amount will have a greater deterrent effect and will benefit employees and employers in reduced injuries related to safety hazards by making occupational safety and health a primary concern of employers.</p> |
| <p>We commend DOSH for its thoughtful approach to rulemaking for this rule as well as other rules recently. It is appreciated that DOSH takes time to seek input from stakeholders, and more importantly, that the feedback is taken into serious consideration as the rules are drafted. This effort on the front end of rulemaking garners more industry acceptance and less technical error and conflict in the final</p> | <p>Thank you for your comment.</p> |

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| rules. | |
| We appreciate the amount of time staff from DOSH have spent explaining to us and other stakeholders the many intricacies of this proposal. We greatly appreciate and value your outreach and transparency. | Thank you for your comment. |
| I participated in personally and our organization has participated in at least four of the public comment sessions that were held before the rule was proposed. We want compliment the agency on this type of approach to rulemaking because the tone at those meetings was that the department was willing to listen to the comments, was willing to take input. It appears that the final product is a reflection of the input that was provided. And for that we appreciate what the department has done. | Thank you for your comment. |
| We appreciate all the work that the department has put in. It's been a very long process, and we are looking forward to a final rule and the implementation. | Thank you for your comment. |
| We would like to express our appreciation for the comment period extension offered by the department and the opportunity to comment on the proposed amendments to Chapter 296-900 WAC and would also like to thank the department for all the pre-hearing meetings. We welcome the collaborative tone set by this process and the responsiveness to inquiries. This DOSH approach works well and should be the approach used throughout the agency. | Thank you for your comment. |
| We appreciate the simplicity of the variable tables. We think it offers fewer opportunities to misinterpret the rule's intent. | Thank you for your comment. |
| We would prefer that the hospitalization standard in the severity rating remain in the top third rating. It's been dropped to a second tier middle rating relative to current rule, and we think that's deserving of a top tier, top third severity rating. | "Hospitalizations" have not been dropped into any particular "tier" but rather the word "hospitalization" was added to help staff better distinguish between a severity of a "1" or a "2", not to prevent hazards the result in serious injuries, that can result in a hospitalization from being cited with a severity of a "3". |
| WAC 296-900-14005 Reasons for monetary penalties | |

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| <p>My comments are limited to WAC 296-900-14005. The proposed rule mandates a minimum civil penalty of \$2,500 per violation for violations contributing to a fatality. My concern is that it doesn't take into account the size of the company and therefore the financial impact on smaller employers is much greater than for larger employers. In addition, a potential penalty of \$500 for a small employer may have the same or an even greater deterrent effect as a large fine on a large employer. I recommend that the "minimum civil penalty of \$2,500 per violation for violations contributing to a fatality" be deleted from the final rule.</p> | <p>The addition of a minimum penalty is a compromise to the language gathered from previous informational meetings held with the public. DOSH decided that rather than an extra multiplier and rather than exclusion to discounts (both of which can result in very high penalties) that a minimum would be set. This solution appealed to most individuals who provided input and was used for the final proposed rule language. This also prevents extremely low monetary penalties of \$100 which most family members find very offensive and can lead to lawsuits by the family against the company.</p> |
| <p>We appreciate the minimum fatality penalty, we think this sends the right message, though we wish it were higher.</p> | <p>Thank you for your comment.</p> |
| <p>We support the establishment of a minimum penalty of \$2,500 for violations that contribute to a fatality. We just simply think that some statement needs to be made to the family and the co-workers that somebody's life is worth, at some minimum, \$2,500 rather than some penalty that might calculate out to something different than that.</p> | <p>Thank you for your comment.</p> |
| <p>WAC 296-900-14010 Base penalties</p> | |
| <p>Probability and severity indexes changed from a 1-6 scale to a 1-3 scale. The new categories are more streamlined and straight forward on one hand but remove opportunities for the compliance officer to assign gravity scores that more accurately reflect the violation. It also removes opportunities for discussion and interpretation during the appeal process. Having additional categories in both severity and probability allows the department flexibility in establishing an overall picture of the employer and the violations that will help that employer improve their safety and health programs moving forward. The consolidation of the scale was generally removing the lower levels of both severity and probability which we feel will result in higher gravity scores overall if the new indexes are applied to the same violation.</p> | <p>The 1-6 probability numbers were already grouped as a 1-2 is a low, 3-4 is a medium and 5-6 is a high. The simplified calculation method brings the penalty amounts in line with the hazards and probabilities that were documented by the compliance staff. While severity number ran 1-6 DOSH only used 4-6 for calculating the penalties on serious hazards and only used 1-3 on gravity based general violations. Gravity based general violations now have a minimum and maximum dollar amount negating the need for severity factors for gravity based generals. This allowed DOSH to replace the 4-6 with the 1-3 for a simplified more well organized penalty table.</p> |
| <p>WAC 296-900-14015 Base penalty adjustments</p> | |

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| <p>Allowing for a 70% reduction for small employers when the vast majority of workers in Washington are employed by these small employers seems counter-intuitive. Why are we INCREASING the discount when the goal of this rulemaking is to increase the penalty average and deterrent effect of violations?</p> | <p>The primary purpose of the rulemaking was to meet OSHA measures for average penalties issued for serious violations. Additional goals were to improve consistency and predictability in the calculation process and ensure the penalty calculation process is used more effectively to encourage employers to comply with rules both before and after an enforcement visit. The employer's size is one of the factors the Department is directed to consider under RCW 49.17.180(7) as the size of the penalty needed to motivate a larger employer is not the same as needed to motivate a smaller employer.</p> <p>Under the Department's current rule, a sliding scale provides for reductions based on size, with the greatest reduction of 60% going to employers with one to 25 employees. In looking at this bracket, the Department proposed further break down in recognition that the penalty size to motivate the smallest employers, those with one to ten employees, is most likely less than those with eleven to 25 employees. This change, in addition to the modifications to the history and faith adjustment factor, was made to provide the most effective use of the penalties where reducing the variability in base penalties is intended to improve consistency and predictability in the calculation process and to help meet OSHA's average penalty measures. Given the other changes to penalty calculation process, the Department believes the further 10% reduction for employers with one to ten employees is appropriate.</p> |
| <p>I believe that the word poor size reduction, particularly the new 70 percent reduction for the smallest businesses, we don't see an apparent reason to further reduce the current 60 percent for small business.</p> | <p>The primary purpose of the rulemaking was to meet OSHA measures for average penalties issued for serious violations. Additional goals were to improve consistency and predictability in the calculation process and ensure the penalty calculation process is used more effectively to</p> |

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| | <p>encourage employers to comply with rules both before and after an enforcement visit. The employer's size is one of the factors the Department is directed to consider under RCW 49.17.180(7) as the size of the penalty needed to motivate a larger employer is not the same as needed to motivate a smaller employer.</p> <p>Under the Department's current rule, a sliding scale provides for reductions based on size, with the greatest reduction of 60% going to employers with one to 25 employees. In looking at this bracket, the Department proposed further break down in recognition that the penalty size to motivate the smallest employers, those with one to ten employees, is most likely less than those with eleven to 25 employees. This change, in addition to the modifications to the history and faith adjustment factor, was made to provide the most effective use of the penalties where reducing the variability in base penalties is intended to improve consistency and predictability in the calculation process and to help meet OSHA's average penalty measures. Given the other changes to penalty calculation process, the Department believes the further 10% reduction for employers with one to ten employees is appropriate.</p> |
| <p>Regarding Table 11, Size of Workforce, we support allowing reductions based on the size of an employer's workforce because it takes into account the financial realities of businesses of different sizes and affords some amount of proportionality of penalties based on the size of the business. We suggest another category be added. The proposed range of 26-100 employees is quite broad. Instead, we suggest breaking it up into two ranges – 26-50 as one group with a 50 percent reduction and 51-100 with a 40 percent reduction. Also, the rule should have a clear definition of workforce. Given that much of labor-intensive agriculture is seasonal, we support a definition that is based on average annual FTE's rather than peak seasonal</p> | <p>The current size discount used by DOSH is well defined and with the updated proposed rule language, it has now been tuned to allow extra small employers who do not possess the resources of larger employers, a discount. This is to encourage those extra small employers to correct their hazards sooner with the resources they did not spend on a penalty. Dividing the size discount table further would encourage inconsistency in the penalty calculation process. Each time an employer is inspected the size discount is calculated based on the number of employees that an employer has at the time of the inspection, to use an average</p> |

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| <p>employment. Average annual FTE is closer to the year-round practices of those farms.</p> | <p>would be very inaccurate and would adversely affect more employers than it helps.</p> |
| <p>Generally speaking, we support the notion of limiting reductions for violations classified as willful, repeat, or failure to abate. However, we believe that leaving all penalties open to deduction would provide for more flexibility and customization to the employment and safety context. We suggest rewording the rules to discourage – but not prohibit – these reductions.</p> | <p>Leaving all type of violations open to deduction would not have the desired deterrent effect on employers that is intended by this rulemaking, and could make Washington State less effective than OSHA. Revising the penalty calculation rules to make them more clear and concise regarding how penalties are to be calculated will make them more consistent to apply and will eliminate “gray areas” for employers so they will know what to expect from DOSH.</p> |
| <p>Regarding Table 8, Employer Inspection History, we believe that this adjustment must be based solely on past performance. The adjustment amount should be determined by the historical record and should not be jeopardized by present conditions or injuries. Because this criteria should stand on its own, we believe reductions should be allowed even for more grave violations if the historical record justifies it.</p> | <p>Inspection citation history can be an indicator of an employer’s overall attitude towards safety but it may not reflect current safety practices taking place at the workplace at the time of a DOSH compliance inspection. While the violation on previous inspections may differ, we believe it is appropriate to prohibit deductions for history for willful violations, failure to abate violations, violations contributing to an inpatient hospitalization with an assigned gravity of 6 to 9 or any violations contributing to a fatality.</p> |
| <p>The employer inspection history table creates the right incentive structure for long-term sustainable safety practices and we are interested in seeing how the implementation of that standard moves the needle, so it will be interesting to see the NIOSH grant to study that. The elimination of reductions for willful and repeating violations, it’s absolutely appropriate to take that stance, and we think it sends the right message against the most blatant disregard for worker safety.</p> | <p>Thank you for your comment.</p> |
| <p>The next comment we wanted to make was to evaluate the direction and control that might be exercised by a corporate entity. We understand that the state is going to look at the corporate entity nationwide, but in some cases you’re only going to look at the franchisee’s ownership. In some cases we think it’s important to take a look at what direction and control the corporate direction has on</p> | <p>Ultimately the direct employer controlling the employees is responsible for their work place safety and DOSH cannot lessen that responsibility by shifting it onto another business entity that may have caused or let the violation occur. DOSH evaluates each situation on the merits and facts that exist at that time when making a determination on</p> |

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| <p>potential safety and health at the worksite. And if you find that that is actually having an impact, then some punishment or some penalty, some result should be attached to that.</p> | <p>employer/employee relationships. DOSH already has directives in place to hold accountable employers where a dual-employer relationship can be shown.</p> |
| <p>Adjustments (History, Quick-Fix Reduction) have a disclaimer at the bottom: “No reduction is given for violations classified as willful, repeated, failure to abate, or contributing to an acute hospitalization or fatal injury or illness or high gravity = 9.” Also, the minimum adjusted penalty for a serious violation contributing to a fatality is two thousand five hundred dollars. These statements create a direct tie between the injury and the penalty calculation. A violation and the fine should be based upon the severity and the probability: hazard and exposure to that hazard. The injury itself may or may not confirm severity or probability. There can also be a number of other factors that increase the severity of the injury or result in fatality. Underlying health and mental conditions, changes in health conditions following the accident, weather and other external factors. Creating the direct tie between the hospitalization/fatalities and penalty amount is not necessary and clouds the compliance inspection process. One violation with a gravity score of 6 or 9 can impact penalties in a very large way. This significance puts the compliance officer directly in the position of adjusting penalties with a single interpretation on a single violation and/or hazard. Also, the boundaries of the “violations contributing to a fatality” are not well defined, leaving a wide level of interpretation up to the compliance officer.</p> | <p>Thank you for your comment, DOSH’s quick-fix is modeled after OSHA’s quick-fix reduction and uses the same criteria for allowance of the reduction. DOSH does not want the quick-fix reduction being over used or abused and therefore must have minimum criteria for allowing the reduction. Compliance staff will be expected to document reasons for any reduction in penalty. DOSH believes it is appropriate to consider injury or potential injuries when calculating penalties because the severity rating is based on and directly tied to a potential or actual injury.</p> |
| <p>WAC 296-900-14020 Increases to adjusted base penalties</p> | |
| <p>We encourage you to reconsider the wording regarding repeat violations. There are times when an employer has multiple worksites, and the DOSH inspector does not visit all those worksites. If the inspector finds a violation at an alternate worksite, the violation becomes a repeat violation. We believe you should allow employers with multiple worksites to have sufficient time to update the safety practices at all facilities before a violation at an alternate</p> | <p>The term “repeat” is well defined in both DOSH and OSHA code and statute, and is well established in case law. To make a change of this nature would make Washington less effective than federal OSHA requirements. In addition, a violation is not a repeat until a final order has been issued, which typically takes time for the appeal process to be completed.</p> |

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| <p>worksite would be cited as “repeat.”</p> | |
| <p>Regarding Table 12, Repeat Violations, we generally support the idea of increasing penalties for repeat violations. However, by the time an employer is cited for a 3rd, 4th, or 5th repeat violation, the employer should actually be cited for a willful violation instead. We believe, however, the rules need to have a mechanism for taking into account employers who have multiple locations separated by many miles and/or have different managers at each location. Those multiple locations may not be in regular communication with each other. A reasonable amount of time for communication needs to elapse before a repeat violation is issued for something at a second location.</p> | <p>The updated rule has been written more concisely to promote consistency state wide so employers will better know what to expect. Introducing an extra time factor for repeat violation information to be disseminated within an employer will only promote a less consistent outcome and can let injuries occur when employees are exposed to uncorrected hazards. It is important that employers who repeat violations be held accountable and work towards fixing the hazard so that further exposure is eliminated. In addition to motivating employers who may get a repeat violation, to correct those hazards sooner. The department has written a quick-fix discount into the rule to encourage abatement of those hazards sooner than later. A violation is not a repeat until a final order has been issued, which typically takes time for the appeal process to be completed.</p> |
| <p>We would prefer the repeat violation scale in the preliminary draft be adopted.</p> | <p>DOSH has made changes since the draft to the proposed rule language that reflects the majority of stake holder input.</p> |