



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(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 14-09-090 ; or  
 Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or  
 Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

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

**Title of rule and other identifying information:**

Chapter 296-900 WAC Administrative Rules.

**Hearing locations:**

See Attachment (2).

**Submit written comments to:**

Name: Cynthia Ireland  
Address: Post Office Box 44620, Olympia, WA 98504-4620  
e-mail: cynthia.ireland@lni.wa.gov  
fax: (360) 902-5619 by March 31, 2015

**Assistance for persons with disabilities:**

Contact: Cynthia Ireland by February 24, 2015  
(360) 902-5522 or cynthia.ireland@lni.wa.gov

**Date of intended adoption:** June 1, 2015

(Note: This is NOT the effective date)

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

The Occupational Safety and Health Administration (OSHA) changed its policies for calculating penalties in October, 2010. In October of 2012, OSHA updated the States Activities Mandated Measures (SAMM) Report to require state plan states to meet new measures for calculating penalties. Failure to adopt rules to respond to the change in OSHA policies and to meet the new SAMM measures could result in the suspension of Washington's state plan approval and or federal funding.

See Attachment (1).

**Reasons supporting proposal:**

The Division of Occupational Safety and Health (DOSH) is proposing to align its penalty calculation rule with OSHA's measures for calculating penalties to ensure that DOSH's rule is at least as effective as OSHA's (requiring 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). The penalty calculation rule proposal contemplated by DOSH is intended to impart a more consistent and fair application of the penalties imposed.

It is important for stakeholders to know that DOSH is considering proposing less impactful penalty calculations designed to give very small businesses an additional size deduction, a new immediate permanent abatement deduction during the inspection for most inspections, and raising the "repeat and failure to abate" multipliers to greatly encourage the elimination of repeat or willful behavior.

**Statutory authority for adoption:**

RCW 49.17.010, RCW 49.17.040, RCW 49.17.050, RCW 49.17.060

**Statute being implemented:**

Chapter 49.17 RCW

**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: February 03, 2015**

**TIME: 10:35 AM**

**WSR 15-04-115**

**DATE**

February 3, 2015

**NAME (type or print)**

Joel Sacks

**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..... Lena Wang	Tumwater, WA	(360) 902-5516
Implementation.... Anne Soiza	Tumwater, WA	(360) 902-5090
Enforcement..... Anne Soiza	Tumwater, WA	(360) 902-5090

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

No. Explain why no statement was prepared. The Penalty Calculation Rules interpret the penalty provisions that the legislature wrote in RCW 49.17 and are not subject to SBEIS requirements. Additionally, the changes in the proposed rule do not place any new obligations on employers and they do not require employers to incur additional costs.

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

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

No: Please explain: The changes in the proposed rule do not place any new obligations on employers and they do not require employers to incur additional costs.

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**AMENDED SECTIONS:**

**WAC 296-900-140 Monetary penalties.**

- Add the following definitions for clarity: base penalty, Division /DOSH, gravity, inpatient hospitalization, probability rate, severity, and WISHA.

**WAC 296-900-14005 Reasons for monetary penalties.**

- Change the word “WISHA” to “DOSH” throughout this section when not related to the actual Act.
- Add a minimum penalty amount of two thousand five hundred dollars for violations issued when contributing to a fatality.

**WAC 296-900-14010 Base penalties.**

- Change the word “WISHA” to “DOSH” throughout this section when not related to the actual Act.
- Change the severity rates to 1 (lowest) to 3 (highest).
- Delete redundant language.
- Change Table 3 to reflect the change to the severity rates. Also, clarified the language in the table.
- Add Table 4 to address severity relating for general violations.
- Update the definition of probability rate and change the probability rates to 1 (lowest) to 3 (highest).
- Add Table 5 to reflect the change to the probability rates.
- Delete current Table 4 and add Table 6 to determine the gravity based penalty. The proposed changes for the severity and probability rates changed the way a gravity based penalty is determined.
- Add clarifying language relating to the minimum and maximum penalties for a serious violation.
- Add Table 7 to address gravity based penalties for general violations. Also add language relating to first time general violations.

**WAC 296-900-14015 Base penalty adjustments.**

- Change the word “WISHA” to “DOSH” throughout this section when not related to the actual Act.
- Add a minimum penalty amount of two thousand five hundred dollars for violations issued when contributing to a fatality.
- Add language in the note referencing Tables 12 through 14.
- Delete current Table 5.
- Add Table 8 relating to employer inspection history. No changes were made to these percentages from current WAC to the proposed rule. Add clarifying language.
- Add language after Table 8 stating that no reduction would be given if the violations are classified as willful, repeat, failure to abate, or violations contributing to an inpatient hospitalization with an assigned gravity of six or nine or any violations contributing to a fatality.
- Add Table 9 relating to good faith. The reduction for excellent good faith (35%) was removed.
- Add clarifying language on how to determine an employer’s good faith.

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- Add language after Table 9 stating that no reduction would be given if the violations are classified as willful, repeat, or failure to abate.
  - Add Table 10 relating to an abatement quick-fix reduction (15%).
  - Add language after Table 10 stating that no reduction would be given if the violations are classified as willful, repeat, failure to abate, or contributing to an inpatient hospitalization or fatality. Also add language that no reduction would be given for blatant violations that are easily corrected or abated.
  - Add Table 11 relating to an employer's size of workforce. The size of workforce was broken out into:
    - 1 – 10 employees (70% reduction)
    - 11 – 25 employees (60% reduction)
    - 26 – 100 employees (40% reduction)
    - 101 – 250 employees (20% reduction)
    - 251 or more employees (No reduction)
  - Add language stating that the employer's size of workforce is based on number of employees nationwide.

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

- Change the word "WISHA" to "DOSH" throughout this section when not related to the actual Act.
- Add language to reference Tables 12 through 14.
- Delete current Table 6.
- Add Table 12 relating to repeat violations. Repeat violations were broken out into:
  - 1<sup>st</sup> time repeat x 2
  - 2<sup>nd</sup> time repeat x 5
  - 3<sup>rd</sup> time repeat x 8
  - 4<sup>th</sup> time repeat x 12
  - 5<sup>th</sup> time repeat x 15
- Add language about the maximum statutory penalty.
- Add a note clarifying that when there is a repeat willful violation the repeat adjustment is taken after the willful assessment.
- Add Table 13 relating to willful violations.
- Add Table 14 relating to failure to abate violations.
- Add Table 15 relating to egregious violations.
- Add Table 16 relating to the penalty calculation method clarifying that all penalty adjustments factors are summed.

**WAC 296-900-180 Definitions.**

- Changed "WISHA services" to "Division of Occupational Safety and Health (DOSH)" in the definition of "Assistant director".
- Add definitions for base penalty, Division/DOSH, gravity, inpatient hospitalization and severity.
- Change the probability rate definition to "ranging from 1 (lowest) to 3 (highest)".

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

Department of Labor and Industries  
Division of Occupational Safety and Health  
CR-102 Filing Date: February 3, 2015  
Hearing Dates: March 10<sup>th</sup> through March 20<sup>th</sup>, 2015

**Attachment (2)**  
(Public Hearings)

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**Public Hearings:**

**Date: March 10, 2015**                      **Time: 9:00 a.m.**  
Department Of Labor and Industries – Tumwater Office  
7273 Linderson Way Southwest  
Tumwater, Washington

**Date: March 11, 2015**                      **Time: 1:00 p.m.**  
Red Lion at the Quay – Vancouver  
100 Columbia Street  
Vancouver, Washington

**Date: March 13, 2015**                      **Time: 9:00 a.m.**  
Department of Labor and Industries – Tukwila Office  
12806 Gateway Drive South  
Tukwila, Washington

**Date: March 16, 2015**                      **Time: 1:00 p.m.**  
Department of Labor and Industries – Yakima Office  
15 West Yakima Avenue, Suite 100  
Yakima, Washington

**Date: March 18, 2015**                      **Time: 9:00 a.m.**  
Enduris Training Facility – Spokane  
1610 South Technology Boulevard  
Spokane, Washington

**Date: March 20, 2015**                      **Time: 9:00 a.m.**  
Department Of Labor and Industries – Tumwater Office  
7273 Linderson Way Southwest  
Tumwater, Washington

**Submit written comments to:**  
Cindy Ireland, Administrative Regulations Analyst ([Cynthia.Ireland@lni.wa.gov](mailto:Cynthia.Ireland@lni.wa.gov))  
Division of Occupational Safety and Health  
P.O. Box 44620  
Olympia, Washington 98504-4620                      By: 5:00 p.m. on March 31, 2015

In addition to written comments, the department will accept comments submitted to the following fax number: (360) 902-5619

Comments submitted by fax must be 10 pages or less.