



# 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) September 1, 2015 (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 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).

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

Repealed: 0  
 Amended: 6 – See Attachment (1).  
 Suspended: 0

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

**Other authority :**

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

Adopted under notice filed in WSR 15-04-115 on February 3, 2015.  
 Continuance of comment period filed in WSR 15-08-089 on March 31, 2015.  
 Describe any changes other than editing from proposed to adopted version: See Attachment (2).

**Date adopted:**

June 9, 2015

**NAME (TYPE OR PRINT)**

Joel Sacks

**SIGNATURE**

**TITLE**

Director

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: June 09, 2015**

**TIME: 3:49 PM**

**WSR 15-13-049**

**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	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	<u>6</u>	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	_____	Repealed	_____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New	_____	Amended	_____	Repealed	_____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	_____	Amended	<u>6</u>	Repealed	_____
-----	-------	---------	----------	----------	-------

**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	<u>6</u>	Repealed	_____

---

---

**AMENDED SECTIONS:**

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

- Added 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.**

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

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

- Changed the word "WISHA" to "DOSH" throughout this section when not related to the actual Act.
- Changed the severity rates to 1 (lowest) to 3 (highest).
- Deleted redundant language.
- Changed Table 3 to reflect the change to the severity rates. Also, clarified the language in the table.
- Added Table 4 to address severity relating for general violations.
- Updated the definition of probability rate and change the probability rates to 1 (lowest) to 3 (highest).
- Added Table 5 to reflect the change to the probability rates.
- Deleted 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.
- Added clarifying language relating to the minimum and maximum penalties for a serious violation.
- Added Table 7 to address gravity based penalties for general violations. Also added language relating to first time general violations.

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

- Changed the word "WISHA" to "DOSH" throughout this section when not related to the actual Act.
- Added a minimum penalty amount of two thousand five hundred dollars for violations issued when contributing to a fatality.
- Added language in the note referencing Tables 12 through 14.
- Deleted current Table 5.
- Added Table 8 relating to employer inspection history. No changes were made to these percentages from current WAC to the proposed rule. Added clarifying language.
- Added 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.
- Added Table 9 relating to good faith. The reduction for excellent good faith (35%) was removed.
- Added clarifying language on how to determine an employer's good faith.

- 
- 
- Added language after Table 9 stating that no reduction would be given if the violations are classified as willful, repeat, or failure to abate.
  - Added Table 10 relating to an abatement quick-fix reduction (15%).
  - Added 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 added language that no reduction would be given for blatant violations that are easily corrected or abated.
  - Added 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)
  - Added 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.**

- Changed the word "WISHA" to "DOSH" throughout this section when not related to the actual Act.
- Added language to reference Tables 12 through 14.
- Deleted current Table 6.
- Added 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
- Added language about the maximum statutory penalty.
- Added a note clarifying that when there is a repeat willful violation the repeat adjustment is taken after the willful assessment.
- Added Table 13 relating to willful violations.
- Added Table 14 relating to failure to abate violations.
- Added Table 15 relating to egregious violations.
- Added 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".
- Added definitions for base penalty, Division/DOSH, gravity, inpatient hospitalization and severity.
- Changed the probability rate definition to "ranging from 1 (lowest) to 3 (highest)".

**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 296-900-140 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.”