



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 18, 2018

TIME: 10:05 AM

WSR 19-01-097

Agency: Department of Labor and Industries

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) January 21, 2019 (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: Purpose of this rulemaking and its anticipated effects, including any changes in existing rules: This rulemaking is a result of the recent amendment to RCW 49.17.180 during the 2018 legislative session under Chapter 128, Laws of 2018 (Substitute House Bill 1953). This rulemaking adopts the recent amendment to RCW 49.17.180 which sets up an annual adjustment system retaining the current penalty maximums for all violations and the minimum for willful violations in statute unless required to be higher by the Federal Occupational Safety and Health Act (OSHA). Below are the adopted amendments:

WAC 296-900-140 Monetary penalties.

- Added a definition for the term “Standard penalty”. It reads, “...means any penalty that does not have an otherwise designated minimum amount”.

WAC 296-900-14005 Reasons for monetary penalties.

- In the note, changed the reference from “MSDS” to “SDS” to be consistent with Chapter 296-901 WAC.
- Added the word “standard” in the phrase addressing one hundred dollar civil penalties.
- Added language relating to willful violations to match the recent change to RCW 49-17-180. It reads, “Five thousand dollars per violation for all willful violations unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state”.

WAC 296-900-14010 Base penalties.

- Added the word “standard” in the phrase addressing one hundred dollar civil penalties.
- Added language relating to the maximum statutory penalty for a serious violation to match the recent change to RCW 49.17.180. It reads, “The maximum statutory penalty for a serious violation will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seven thousand dollars, whichever is more”.
- Added links to the federal Occupational Safety and Health Administration – OSHA penalties, 29 C.F.R. 1903.15 and RCW 49.17.180.

WAC 296-900-14015 Base penalty adjustments.

- Added the word “standard” in the phrase addressing one hundred dollar civil penalties.
- Added language relating to the minimum penalty for willful violations to match the recent change to RCW 49.17.180. It reads, “The minimum penalty for willful violations is five thousand dollars per violation unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state”.
- Added language relating to the maximum adjusted base penalty for a violation to match the recent change to RCW 49.17.180. It reads, “The maximum adjusted base penalty for a violation will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seven thousand dollars, whichever is more”.
- Deleted the note relating to repeat, willful, egregious and failure to abate violations.

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

- Added language relating to the maximum statutory penalty to match the recent change to RCW 49-17-180. It reads, “The maximum statutory penalty will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seventy thousand dollars, whichever is more.”
- Added language relating to the minimum statutory penalty for willful violations to match the recent change to RCW 49-17-180. It reads, “The minimum statutory penalty for willful violations is five thousand dollars per violation unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state”.

Citation of rules affected by this order:

New: 0

Repealed: 0

Amended: WAC 296-900-140, WAC 296-900-14005, WAC 296-900-14010, WAC 296-900-14015, WAC 296-900-14020

Suspended: 0

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

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 18-21-170 on October 23, 2018 (date).

Describe any changes other than editing from proposed to adopted version: None

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

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**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	<u>5</u>	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	<u>5</u>	Repealed	___

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

New ___ Amended ___ Repealed ___

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

New ___ Amended ___ Repealed ___

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

New ___ Amended ___ Repealed ___

The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: December 18, 2018

Signature:

Name: Joel Sacks

A handwritten signature in black ink that reads "Joel Sacks". The signature is written in a cursive style with a large initial 'J' and 'S'.

Title: Director