

WSR 24-18-095
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed September 3, 2024, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-09-063.

Title of Rule and Other Identifying Information: Monetary penalties and appeals; chapter 296-900 WAC, Administrative rules.

Hearing Location(s): On October 9, 2024, at 9:30 a.m., virtual and telephonic hearing. Join electronically <https://lni-wa-gov.zoom.us/j/84561146952?pwd=TOg0gp7W5v0nfrAmT6jxGxSYmjSsyZ.1>; or join by phone (audio only) 253-215-8782, Meeting ID 845 6114 6952, Passcode 9309637529. A prehearing overview will begin at 9:00 a.m. The hearing will start at 9:30 a.m. and will continue until all oral comments are received; and

On October 10, 2024, at 3:00 p.m., virtual and telephonic hearing. Join electronically <https://lni-wa-gov.zoom.us/j/84650759832?pwd=y8Qu8GbIBg593CHGryDnK6urbhmLWG.1>; or join by phone (audio only) 253-215-8782, Meeting ID 846 5075 9832, Passcode 8256498162. A prehearing overview will begin at 2:30 p.m. The hearing will start at 3:00 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: December 17, 2024.

Submit Written Comments to: Carmyn Shute, Administrative Regulations Analyst, Department of Labor and Industries (L&I), Division of Occupational Safety and Health (DOSH), P.O. Box 44620, Olympia, WA 98504-4620, email Carmyn.Shute@lni.wa.gov, fax 360-902-5619, beginning September 4, 2024, 8:00 a.m., by November 1, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Carmyn Shute, administrative regulations analyst, phone 360-870-4525, fax 360-902-5619, email Carmyn.Shute@lni.wa.gov, by October 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DOSH initiated this rule making to update how the base penalties are calculated in order to make penalties more effective and address concerns raised through the federal Occupational Safety and Health Administration (OSHA). State Activities Mandated Measures (SAMM) report that Washington penalties continue to be below the national average. OSHA uses the SAMM report to determine whether state plans are as-effective-as OSHA.

The proposed changes include:

- The base penalty rate will be adjusted for inflation every year based on the consumer price index for all urban consumers (CPI-U).
- The base penalty amount may also be increased by an additional two percent if DOSH is not within 25 percent of the national penalty average determined by OSHA.
- Numbering definitions to aid in education and research.
- Removing the terms "you" and "we" and replacing with "employee" and "employer" to provide clarity.
- Removing the term "Washington Industrial Safety and Health Act" or "WISHA" and replacing with "DOSH" where the term is meant to refer to DOSH.
- Removing outdated fax number information.
- Updating USPS mail and email resources for contacting L&I.

Reasons Supporting Proposal: The proposed rule making is needed in order to be at-least-as-effective-as OSHA under the Washington state plan and make needed housekeeping adjustments.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, 49.17.180, and 49.17.190.

Statute Being Implemented: Chapter 49.17 RCW.

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: OSHA, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy West, Tumwater, Washington, 509-237-2372; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes are either exempt under RCW 34.05.328 (5)(b)(iv) as housekeeping updates that do not change the substance or effect of the rule or as changes that do not place any new obligations on employers and they do not require employers to incur additional costs of compliance as related to enforcement.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Except for proposed changes to WAC 296-900-14010 Base penalties, all proposed changes are exempt under RCW 34.05.310 (4)(d) as housekeeping updates that do not change the substance or effect of the rule.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Proposed changes under WAC 296-900-14010 Base penalties, have no costs as the penalty calculation rules interpret the penalty provisions that the legislature wrote in chapter 49.17 RCW. 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 of compliance as related to enforcement.

September 3, 2024

Joel Sacks
Director

OTS-5776.3

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-099 Definitions. (1) Affected employees. Employees who could be one of the following:

(a) Exposed to unsafe conditions or practices.

(b) Affected by a request for, or change in, a variance from ((WISHA)) DOSH requirements.

(2) **Applicant.** The entity submitting an application and formal proposal for a safety and health investment projects award.

(3) **Assistant director.** The assistant director for the division of occupational safety and health (DOSH) at the department of labor and industries or ((his/her)) their designated representative.

(4) **Base penalty.** The penalty amount calculated for a violation by considering either specific statutory penalty amounts or the gravity of the violation.

(5) **Board or BIIA.** The board of industrial insurance appeals.

(6) **Certification.** An employer's written statement describing when and how a citation violation was corrected.

(7) **Citation.** See citation and notice.

(8) **Citation and notice.** Issued to an employer for any violation of ((WISHA safety and health)) DOSH requirements. Also known as a citation and notice of assessment, or simply citation.

(9) **Correction action plans.** Your written plans for correcting a ((WISHA)) DOSH violation.

(10) **Correction date.** The date by which you must meet the ((WISHA)) DOSH requirements listed on either a:

(a) Citation and notice (C&N); or

(b) A corrective notice of redetermination (CNR).

(11) **Corrective notice of redetermination (CNR).** Notice issued ((by WISHA)) after ((WISHA)) DOSH has reassumed jurisdiction over an appealed citation and notice.

(12) **Department.** The department of labor and industries.

(13) **Designated representative.** Any of the following:

(a) Any individual or organization to which an employee gives written authorization.

(b) A recognized or certified collective bargaining agent without regard to written employee authorization.

(c) The legal representative of a deceased or legally incapacitated employee.

(14) **Division or DOSH.** The division of occupational safety and health ((, Washington state department of labor and industries)).

(15) **Documentation.** Material that an employer submits to prove that a correction is completed. Documentation includes, but is not limited to, photographs, receipts for materials and labor.

(16) **Failure to abate (FTA).** A DOSH violation that was cited previously which the employer has not fixed.

(17) **Final order.** Any of the following (unless an employer or other party files a timely appeal):

(a) Citation and notice.

(b) Corrective notice of redetermination.

(c) Decision and order from the board of industrial insurance appeals.

(d) Denial of petition for review from the board of industrial insurance appeals.

(e) Decision from a Washington state superior court, court of appeals, or the state supreme court.

(18) **Final order date.** The date a final order is issued.

(19) **Funding cycle.** How frequently safety and health investment project (SHIP) awards are given.

(20) **Gravity.** For purposes of calculating a penalty means the amount calculated by multiplying a violation's severity rate by its probability rate.

(21) Hazard. Any condition, potential or inherent, which can cause injury, death, or occupational disease.

(22) Imminent danger violation. Any violation resulting from conditions or practices in any place of employment, which are such that a danger exists which could reasonably be expected to cause death or serious physical harm, immediately or before such danger can be eliminated through the enforcement procedures otherwise provided by the Washington Industrial Safety and Health Act.

(23) Inpatient hospitalization. Formal admission to the inpatient service of a hospital or an equivalent medical facility on an emergent basis for a work-related injury, or illness.

(24) Interim order. An order allowing an employer to vary from ((WISHA)) DOSH requirements until a permanent or temporary variance is granted.

(25) Medical aid fund. Industrial insurance funds established in chapter 51.44 RCW.

(26) Milestones. Critical points of achievement for the safety and health investment projects, showing progress toward project completion. Milestones are interim accomplishments that define project progress.

(27) Monetary penalties. Fines assessed against an employer for violations of safety and health requirements.

(28) Movable equipment. A hand-held or nonhand-held machine or device that:

(a) Is powered or nonpowered.

(b) Can be moved within or between worksites.

(29) Must. Means mandatory.

(30) Permanent variance. Allows an employer to vary from ((WISHA)) DOSH requirements when an alternate means, that provides equal protection to workers, is used.

(31) Probability. A number that describes the likelihood of an injury, illness, or disease occurring, ranging from 1 (lowest) to 3 (highest).

(32) Product. Any of the following that are developed as the result of a safety and health investment project: Written materials; manufactured materials; designs; equipment; programs; services; workplace changes; or other results of any kind, tangible or intangible.

(33) Reassume jurisdiction. ((WISHA)) DOSH has decided to provide the employer with an informal conference to discuss their appeal.

(34) Recipient. An agency, firm, organization, individual or other legal entity receiving project award funds from the safety and health investment projects.

(35) Repeat violation. A DOSH violation where the employer has been cited one or more times previously for a substantially similar hazard, and the prior violation has become a final order no more than three years prior to the employer committing the violation being cited.

(36) Serious violation. A DOSH violation when there is a substantial probability that death or serious physical harm could result from one of the following in the workplace:

(a) A condition that exists.

(b) One or more practices, means, methods, operations, or processes that have been adopted or are in use.

(37) Severity. For purposes of calculating a penalty means the most serious injury, illness, or disease that could be reasonably expected to occur, ranging from 1 (lowest) to 3 (highest), because of a hazardous condition.

(38) **Temporary variance.** Allows an employer to vary from ((WI-SHA)) DOSH requirements under certain circumstances.

(39) **Variance.** Provides an approved alternative to ((WISHA)) DOSH requirements to protect employees from a workplace hazard. Variances can be permanent or temporary.

(40) **WAC.** An acronym for Washington Administrative Code, which are rules developed to address state law.

(41) **WISHA.** This is an acronym for the Washington Industrial Safety and Health Act, chapter 49.17 RCW.

~~((You. An employer.))~~

Sample Tag for Cited Moveable Equipment

<p>WARNING: EQUIPMENT HAZARD</p> <p>Cited by the Department of Labor and Industries</p>	Equipment cited:
	Hazard cited:
	For detailed information, see L&I citation posted at:

<p>WARNING: EQUIPMENT HAZARD</p> <p>See reverse side</p>	<p>This tag or similar tag or a copy of the citation must remain attached to this equipment until the criteria for removal in WAC 296-900-15035 are met.</p> <p>The tag/citation copy must not be altered, defaced, or covered by other material.</p>
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AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-100 Scope. This chapter applies to the following requirements and information regarding administration of the Washington Industrial Safety and Health Act (WISHA), chapter 49.17 RCW:

(1) Employer requests for using an alternative to ((WISHA)) DOSH requirements.

(2) Workplace inspections conducted by ((WISHA)) DOSH.

- (3) Citations and penalties for violations of ((WISHA safety and health)) DOSH requirements.
- (4) How to respond to actions that ((WISHA)) DOSH may take when requirements have been violated.
- (5) Employer correction of cited violations, and notification to ((WISHA)) DOSH when the corrections are made.
- (6) Employer obligations to inform employees.
- (7) Reporting alleged safety and health hazards.
- (8) Appeal and hearing processes for employers and employees.
- (9) Safety and health investment projects (SHIP).

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-110 Variances.

Summary:

Employer responsibility.

((You)) <u>Employer</u> must meet the requirements...	in this section:
Applying for a variance	WAC 296-900-11005
Interim orders	WAC 296-900-11010
Renewing a temporary variance	WAC 296-900-11015
Changing a variance	WAC 296-900-11020
Variance hearings	WAC 296-900-11025

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-11005 Applying for a variance.

IMPORTANT :

1. A variance provides an approved alternative to ((WISHA)) DOSH requirements to protect employees from a workplace hazard. Variances can be permanent or temporary.

2. Variances will **not** be retroactive. Employers are obligated to follow ((WISHA)) DOSH requirements until the variance is granted.

(1) ((You)) The employer must follow steps 1-5 to apply for a variance when ((you)) they wish to use an alternative to ((WISHA)) DOSH requirements as a means to protect ((you)) employees.

Step 1: Decide what type of variance is needed by reviewing the types of variances in Table 1, Requesting a Variance.

Step 2: Complete a written application for the variance, following the requirements in Table 1, Requesting a Variance.

Note: A form, Variance Application (((F414-021-000)) F414-157-000), is available for requesting variances:
 1. From any L&I office.
 2. On our website under Safety Forms, Variance Application (<http://www.lni.wa.gov/FormPublications/TablesForms/Safety/SafetyHealth.asp>)
<https://lni.wa.gov/forms-publications/F414-157-000.pdf>.

Reference: For a list of the local L&I offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

Step 3: Notify employees before submitting any type of variance request by doing all of the following:

- Posting a copy of the request on ~~((your))~~ the safety bulletin board or where employees will easily access the information such as a break or lunch room.
- Using other appropriate means for notifying employees who may not be expected to receive notices posted on the safety bulletin board. For example, provide a copy to a designated representative or the safety committee.

Step 4: Submit the written request, using one of the following means:

- Mail to:

(~~(Assistant Director))~~ Department of Labor & Industries
(~~(WISHA Services))~~ Division of Occupational Safety and Health
P.O. Box 44650
Olympia, WA 98504-4650

- (~~(Fax to: 360-902-5438))~~ Email to:
DOSHVarianceProgram@Lni.wa.gov
- Take to any L&I office.

Step 5: After receiving a written decision from (~~(WISHA about your request))~~ DOSH, immediately notify affected employees of the decision by using the methods in Step 3.

(2) You must follow the specific requirements of the variance that (~~(WISHA))~~ DOSH has granted.

Notes:

1. If employers fail to follow Steps 1-5 above, the variance cannot be granted.
2. Citations may be issued for failing to follow a variance.
3. Employers can always follow the original (~~(WISHA))~~ DOSH requirements instead of the variance requirements.
4. If your variance is no longer necessary and (~~(you))~~ the employer decide to follow the (~~(WISHA))~~ DOSH requirements instead, please advise (~~(WISHA))~~ DOSH in writing.

Table 1
Requesting a Variance

For this type of variance:	Include the following on ((your)) written application:
<p>Permanent variance</p> <p>– Request a permanent variance if ((you can show that you)) <u>it can be shown that the employer will be providing alternate methods of protecting employees from hazards that are as effective as those provided by the requirements ((from which you are)) the variance is requesting relief.</u></p> <p>Note:</p>	<ul style="list-style-type: none"> • Employer name and address • Employer or employer representative signature • Work locations and situations that apply to the variance • Which specific requirements you want to vary from, with WAC numbers • Description of proposed alternative methods of protection, and how they will protect employees. • How employees will be notified:

For this type of variance:	Include the following on ((your)) written application:
<ul style="list-style-type: none"> • A permanent variance remains in effect unless ((WISHA)) DOSH modifies or revokes it. Examples of reasons a variance might be revoked include: <ul style="list-style-type: none"> – An employer requests the variance be revoked – Requirements that existed when the variance was approved are modified – The work location is changed 	<ul style="list-style-type: none"> – About the variance request, as required in Step 2 – That they may request a hearing • The following notice on the first page of your posted application, written in large and clear enough print to be easily read: "Attention Employees: Your employer is applying to ((WISHA)) DOSH for a variance from safety and health requirements. You have a right to ask ((WISHA)) DOSH for a hearing on the variance request, but you must ask for the hearing in writing by (date*). If no hearing is requested, ((WISHA)) DOSH will act on the variance request without a hearing." *This date must be 21 calendar days after the variance request is mailed or delivered.
<p>Temporary variance Request a temporary variance if both of the following apply:</p> <ul style="list-style-type: none"> • New ((WISHA)) DOSH requirements cannot be met for any of the following reasons: <ul style="list-style-type: none"> – Professional or technical people are not available – Materials or equipment are not available – Construction or alteration of facilities cannot be completed by the effective date of the requirements 	<ul style="list-style-type: none"> • Provide all the information required above for permanent variances • Also provide all of the following: <ul style="list-style-type: none"> – An explanation of why ((WISHA)) DOSH requirements cannot be met, including documentation that supports this belief – Steps that will be taken to protect employees until ((WISHA)) DOSH requirements can be met – When ((WISHA)) DOSH requirements will be met

For this type of variance:	Include the following on ((your)) written application:
<ul style="list-style-type: none"> • ((You have)) <u>Employer</u> has an effective plan for meeting ((WISHA)) <u>DOSH</u> requirements as soon as possible. <p>Note:</p> <ul style="list-style-type: none"> • Temporary variances remain in effect: <ul style="list-style-type: none"> - Until current ((WISHA)) <u>DOSH</u> requirements are met - No longer than one year, unless extended 	<ul style="list-style-type: none"> - A statement that this request is from a qualified person who has first hand knowledge of the facts represented

What to expect from ((WISHA)) DOSH:

(3) A review of all variance requests.

If more information is needed to make a decision, ((WISHA)) DOSH may:

(a) Contact ((you)) the employer or others who may have the needed information.

(b) Visit ((your)) the workplace after contacting ((you)) the employer to make arrangements.

(c) Deny ((your)) the request if ((you do not provide)) information needed to make a decision on it is not provided.

(4) A decision at least ((twenty-one)) 21 calendar days from when the request was posted for employees.

The ((twenty-one)) 21-day period allows employees time to request a hearing on ((your)) a variance application. See Variance hearings, WAC 296-900-11025.

(5) A written decision either granting or denying the variance.

(a) If granted, the written decision will include all of the following:

(i) The requirement for which the variance applies.

(ii) The locations where the variance applies.

(iii) What ((you)) the employer must do as an alternative means of protecting employees.

(iv) The effective date of the variance.

(v) An expiration date for the variance, if applicable.

(vi) The requirement to post the decision.

(b) If denied, the written decision will include:

(i) A brief statement with reasons for the denial.

(ii) The requirement to post the decision.

(6) ((WISHA)) DOSH will review permanent variances periodically after they have been in effect for six months, to decide whether they are still needed or need to be changed.

Note: If there is an appealed ((WISHA)) DOSH citation and notice that relates to the variance request, the decision on the variance may be delayed until the appeal is resolved.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-11010 Interim orders.

((Definition:

An interim order allows an employer to vary from WISHA requirements until a permanent or temporary variance is granted.)

(1) ~~((You))~~ Employers must request an interim order if alternate methods of protecting employees are needed while waiting for a permanent or temporary variance.

Note: An interim order may be requested at the same time a permanent or temporary variance is requested, or anytime after that.

What to expect from ((WISHA)) DOSH:

(2) A review of the request for an interim order.

If more information is needed to make a decision, ((WISHA)) DOSH may:

(a) Contact the employer or others who may have the needed information.

(b) Visit the workplace after contacting the employer to make arrangements.

(c) Deny the request if the employer does not provide information needed to make a decision.

(3) A decision at least ~~((twenty-one))~~ 21 calendar days from when the request was posted for employees.

The ~~((twenty-one))~~ 21-day period allows employees time to request a hearing on ~~((year))~~ the temporary variance renewal. See Variance hearings, WAC 296-900-11025.

(4) A written decision either granting or denying the interim order request.

(a) If granted, the decision will include all of the following:

(i) The requirement for which the interim order applies.

(ii) The locations where the interim order applies.

(iii) What ~~((you))~~ the employer must do as an alternative means of protecting employees.

(iv) The effective date of the interim order.

(v) An expiration date for the interim order.

(vi) The requirement to post the decision.

(b) If denied, the decision will include:

(i) A brief statement with reasons for the denial.

(ii) The requirement to post the decision.

Notes:

- 1. ((WISHA's)) DOSH's decision to grant or deny an interim order request will not affect the decision on a permanent or temporary variance request.
- 2. ((WISHA)) DOSH may choose to issue an interim order in response to a variance request, even when the interim order was not specifically requested.
- 3. Interim orders are effective until they are revoked, or until the variance request is granted or denied.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-11015 Renewing a temporary variance.

IMPORTANT :

Temporary variances can be renewed up to two times, for up to ~~((one hundred eighty))~~ 180 days each time.

(1) ~~((You))~~ The employer must apply for a temporary variance renewal at least ~~((ninety))~~ 90 days before the temporary variance expires.

(2) ~~((You))~~ The employer must send a letter, explaining why more time is needed to fulfill the current requirements.

What to expect from ((WISHA)) DOSH:

(3) A review of the temporary variance renewal request.

If more information is needed to make a decision, ((WISHA)) DOSH may:

- (a) Contact ((you)) the employer or others who may have the needed information.
- (b) Visit your workplace after contacting ((you)) the employer to make arrangements.
- (c) Deny ((your)) the request if ((you do not provide)) information needed to make a decision is not provided.
- (4) A decision at least ((twenty-one)) 21 calendar days from when the request was posted for employees.
The ((twenty-one)) 21-day period allows employees time to request a hearing on ((your)) a temporary variance renewal. See Variance hearings, WAC 296-900-11025.
- (5) A written decision either granting or denying the temporary variance renewal request.
 - (a) If granted, the written decision will include all of the following:
 - (i) The requirements for which the temporary variance applies.
 - (ii) The locations where the temporary variance applies.
 - (iii) What ((you)) the employer must do as an alternative means of protecting employees.
 - (iv) The effective date of the temporary variance.
 - (v) An expiration date for the temporary variance.
 - (vi) The requirement to post the decision.
 - (b) If denied, the written decision will include:
 - (i) A brief statement with reasons for the denial.
 - (ii) The requirement to post the decision.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-11020 Changing a variance. (1) ((You)) An employer, ((your)) employees, or their representatives may request changes to variances in writing as follows:

- (a) For a permanent variance only after it has been in effect for at least six months.
- (b) For a temporary variance, only when renewing it.

Notes:

1. After six months, ((WISHA)) DOSH may initiate changes to a variance if ((they appear to be)) warranted.
2. Employers can decide at any time to follow the original requirement, instead of the requested variance.

What to expect from ((WISHA)) DOSH:

- (2) A review of your request to change a variance.
If more information is needed to make a decision, ((WISHA)) DOSH may:
 - (a) Contact ((you)) the employer or others who may have the needed information.
 - (b) Visit ((your)) the workplace after contacting you to make arrangements.
 - (c) Deny ((your)) the request for a change if ((you do not provide)) information needed to make a decision is not provided.
 - (3) A decision at least ((twenty-one)) 21 calendar days from when the request was posted for employees.
The ((twenty-one)) 21-day period allows employees time to request a hearing on ((your)) the request to change a variance. See Variance hearings, WAC 296-900-11025.

(4) A written decision either granting or denying the change in variance.

(a) If granted, the written decision will include all of the following:

- (i) The requirements for which the variance applies.
 - (ii) The locations for which the variance applies.
 - (iii) What ~~((you))~~ the employer must do as an alternative means of protecting employees.
 - (iv) The effective date of the change in variance.
 - (v) An expiration date of the variance, if applicable.
 - (vi) The requirement to post the decision.
- (b) If denied, the written decision will include:
- (i) A brief statement with reasons for the denial.
 - (ii) The requirement to post the decision.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-11025 Variance hearings.

IMPORTANT :

Employers, affected employees, or employee representatives may request a hearing on any of the following:

1. Permanent or temporary variance requests.
2. Changes to existing variances.

(1) ~~((You))~~ The employer and ~~((you))~~ affected employees must do all of the following if requesting a variance hearing:

- (a) Put the request in writing and sign it.
- (b) Make sure the request is posted or delivered to the ~~((department))~~ DOSH within ~~((twenty-one))~~ 21 calendar days from the variance application date, or renewal request date.
- (c) Send the written request to ~~((WISHA))~~ DOSH, using one of the following means:

Mail to:

~~((Assistant Director~~
~~WISHA Services))~~ Department of Labor & Industries
Division of Occupational Safety and Health
 P.O. Box 44650
 Olympia, WA 98504-4650

~~((Fax to: 360-902-5438))~~ Email to: DOSHVarianceProgram@Lni.wa.gov
 Take to any L&I office.

(2) ~~((You))~~ The employer must immediately do all of the following when ~~((you))~~ they receive a notice of the hearing from ~~((WISHA))~~ DOSH:

- (a) Post a copy of the notice on the safety bulletin board.
- (b) Give a copy of the notice to affected employees and employee representatives.
- (c) Use any other appropriate means for notifying employees who may not receive notices posted on the safety bulletin board. For example, provide a copy to a designated representative or the safety committee.

What to expect from ~~((WISHA))~~ DOSH:

(3) ~~((WISHA))~~ DOSH will do both of the following after receiving a request for a hearing on a variance, change of variance, or temporary variance renewal:

(a) Within (~~ten~~) 10 days, issue a notice advising all interested parties listed on the application that they have the option to participate in the hearing.

(b) Provide (~~you~~) the employer with a notice of the hearing at least (~~twenty~~) 20 calendar days before the hearing date.

(4) A hearing for the variance or variance change will be conducted as follows:

(a) A (~~WISHA~~) DOSH representative will explain (~~WISHA's~~) DOSH's view of the request for a variance or any proposed change to a variance.

(b) Employers, employees, or employee representatives will then have an opportunity to explain their views and provide any relevant documents or information.

(5) Information gathered at the hearing will be used to make a decision about whether to grant or deny the request for a variance or change in variance.

- Notes:**
1. (~~WISHA~~) DOSH may record a variance hearing.
 2. Employers, employees, or employee representatives may request copies of recordings or transcripts of variance hearings at cost.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

**WAC 296-900-120 Inspections.
Summary.**

(You) The employer must meet the requirements...	in this section:
(WISHA) <u>DOSH</u> inspections	WAC 296-900-12005
Inspection techniques	WAC 296-900-12010
Complaints	WAC 296-900-12015

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-12005 ((WISHA)) DOSH inspections. (1) ((WISHA)) DOSH conducts the following types of **programmed** inspections:

(a) Hazardous workplaces.

((WISHA)) DOSH identifies hazardous workplaces using objective criteria and inspection-scheduling systems that may include any of the following factors:

- (i) Type of industry.
- (ii) Injury and illness data that identifies hazards.
- (iii) Employer's industrial insurance experience.
- (iv) Number, type, and toxicity of contaminants in the workplace.
- (v) Degree of exposure to hazards.
- (vi) Number of employees exposed.
- (vii) Other factors, such as history of employee complaints.

Note: ((WISHA)) DOSH periodically reviews the scheduling systems and may adjust the type or significance of each criteria.

(b) High hazard industries that include the following:

- (i) Agriculture.
- (ii) Asbestos renovation and demolition.
- (iii) Construction.

- (iv) Electrical utilities and communications.
- (v) Logging.
- (vi) Maritime.

(2) ((WISHA)) DOSH conducts the following types of **unprogrammed** inspections of workplaces that may be in violation of ((WISHA)) DOSH safety or health requirements or chapter 49.17 RCW, Washington Industrial Safety and Health Act. These inspections may focus only on certain areas or processes in a workplace or, depending on initial findings, may be expanded to include the entire workplace. Unprogrammed inspections may occur because of:

- (a) Complaints from current employees or employee representatives who believe they have been exposed to a hazard because of a violation.
- (b) Referrals from anyone, including former employees, who reasonably believes that workers under ((WISHA)) DOSH jurisdiction are being, or have been, exposed to a hazard because of a violation.
- (c) Workplace deaths, catastrophic events, or serious injury or illness.
- (d) A reason to believe that employees may be in imminent danger of serious injury or death.
- (e) Follow-up inspections to verify that hazards identified in a previous inspection have been corrected.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-12010 Inspection techniques. During an inspection, ((WISHA)) DOSH staff may:

- (1) Take samples, photographs, videotapes, or audiotapes.
- (2) Conduct tests or interviews.
- (3) Ask employees to wear sampling devices.
- (4) Privately question, on or off the worksite, any:
 - (a) Employer.
 - (b) Employer representative.
 - (c) Owner.
 - (d) Operator.
 - (e) Employee.
 - (f) Employee representative.
- (5) Employ any other reasonable investigative techniques.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-12015 Complaints. (1) Employees or employee representatives may file a written complaint if they believe they have been exposed to a hazard that is a violation of ((WISHA safety and health)) DOSH requirements.

What to expect from ((WISHA)) DOSH:

(2) After receiving a written complaint from an employee or employee representative, ((WISHA)) DOSH reviews the allegations and responds according to Table 2, ((WISHA)) DOSH Responses to Employee Complaints.

Table 2

((WISHA)) DOSH Responses to Employee Complaints

For this determination:	((WISHA)) <u>DOSH</u> will take the following actions:
<p>The complaint is within ((WISHA)) <u>DOSH</u> jurisdiction and an inspection does not appear to be needed at this time</p>	<ul style="list-style-type: none"> • Call the employer to discuss the complaint • Set a deadline for the employer to respond in writing • ((Fax)) <u>Email</u> or mail a complaint notification letter to the employer. Before the complaint is ((faxed)) <u>emailed</u> or mailed, the following names will be removed unless specific permission is given to include them: <ul style="list-style-type: none"> – The name of the person submitting the complaint – The names of any employees identified in the complaint • Evaluate the employer's response, and do one of the following: <ul style="list-style-type: none"> – Close the complaint because the issues have been addressed, and send a copy of the employer's response to the person filing the complaint – Inspect the workplace <p>Note:</p> <ul style="list-style-type: none"> • If the complaint is closed and additional information is received from the person filing the complaint disputing the employer's written response, ((WISHA)) <u>DOSH</u> may schedule an inspection • If the person who filed the original complaint requests in writing that ((WISHA)) <u>DOSH</u> review a decision not to conduct an inspection, ((WISHA)) <u>DOSH</u> will review the decision and notify the person in writing of the results

For this determination:	((WISHA)) DOSH will take the following actions:
	<ul style="list-style-type: none"> If the person requesting the review is not satisfied with the results of the review, they may request a second review by the assistant director or designee
The complaint is within ((WISHA)) DOSH jurisdiction and an inspection needs to be conducted	<ul style="list-style-type: none"> Conduct an inspection Issue a citation and notice that shows one of the following: <ul style="list-style-type: none"> Violations found No violations were found Send a letter to the person filing the complaint with inspection results <p>Reference: For citation and notice information, turn to citation and notice, WAC 296-900-130</p>
The complaint is not within ((WISHA)) DOSH jurisdiction	<ul style="list-style-type: none"> Send a written response to the person filing the complaint explaining the matter is not within ((WISHA)) DOSH jurisdiction <p>Note: ((WISHA)) DOSH may make a referral to the proper authority</p>

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-130 Citation and notice.

Summary:

Employer responsibility:

To notify employees when a citation and notice is received.

((You)) The employer must meet the requirements...	in this section:
Citation and notice	WAC 296-900-13005
Copies of future citations and notices	WAC 296-900-13010
Posting citation and notices	WAC 296-900-13015

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-13005 Citation and notice.

Definition:

- (1) A citation and notice is a document issued to an employer notifying them of:
- (a) Inspection results.
 - (b) Any specific violations of (~~(WISHA safety and health)~~) DOSH requirements.
 - (c) Any monetary penalties assessed.
 - (d) Employer certification of correction requirements.
 - (e) (~~(WISHA)~~) DOSH will mail or serve by electronic means a citation and notice to you as soon as possible but not later than six months following any inspection or investigation.
- (2) If violations are found, the citation and notice will include:
- (a) A description of violations found.
 - (b) The amount and type of assessed penalties.
 - (c) The length of time given to correct the violations not already corrected during the inspection.
- (3) If no violations are found, a notice of inspection results will be sent stating that no violations were found or penalties assessed.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-13010 Copies of future citation and notices. Employees or their representatives wishing to receive copies of citation and notices during the next (~~twelve~~) 12 months must:

- (1) Submit a request for copy of citation and notice form to the following:

Department of Labor and Industries
(~~(Standards and Information)~~) Division of Occupational Safety and Health
P.O. Box 44638
Olympia, WA 98504-4638

Note: A request for copy of citation and notice form can be obtained by:
1. Calling 360-902-5553.
2. Contacting the local L&I office.

Reference: For a list of the local L&I offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

What to expect from (~~(WISHA)~~) DOSH:

- (2) (~~(WISHA)~~) DOSH may decide who will receive copies of the citation and notices if more than one employee or employee representative requests a copy.
- (3) (~~(WISHA)~~) DOSH may deny a request for copies of citation and notices if the person filing the request is not an employee or employee representative.
- (4) If (~~(WISHA)~~) DOSH grants the request for copies of citation and notices, the employee or employee representative will:
- (a) Receive an approval document from (~~(WISHA)~~) DOSH.
 - (b) Receive all citation and notices issued to that employer for the next (~~twelve~~) 12 months.

(c) Continue receiving citation and notices for an additional ((twelve)) 12 months if a one-year extension is requested and approved.

AMENDATORY SECTION (Amending WSR 21-22-089, filed 11/2/21, effective 12/3/21)

WAC 296-900-13015 Posting citation and notices. (1) ((You)) The employer must immediately notify employees of a citation and notice by posting it and any correspondence related to an employee complaint on the safety bulletin board for seven working days, excluding weekends and holidays, or until all violations are corrected, whichever time period is longer. As an option, an employer may use electronic means to supplement the bulletin board, such as with telework employees.

(2) ((You)) The employer must use any other appropriate means to notify employees who may receive notices posted on the safety bulletin board.

Examples of other appropriate means include sending a copy by mail or electronically to any of the following:

- (a) A designated employee representative.
- (b) Safety representatives.
- (c) The safety committee.

AMENDATORY SECTION (Amending WSR 19-01-097, filed 12/18/18, effective 1/21/19)

WAC 296-900-140 Monetary penalties.

Summary:

Employer responsibility:

To pay monetary penalties if assessed.

Contents:

Reasons for monetary penalties

WAC 296-900-14005.

Base penalties

WAC 296-900-14010.

Base penalty adjustments

WAC 296-900-14015.

Increases to adjusted base penalties

WAC 296-900-14020.

((Definitions:))

• ~~"Base penalty" means that penalty amount calculated for a violation by considering either specific statutory penalty amounts or the gravity of the violation.~~

• ~~"Division" or "DOSH" means the division of occupational safety and health, Washington state department of labor and industries.~~

• ~~"Gravity" for purposes of calculating a penalty, means the amount calculated by multiplying a violation's severity rate by its probability rate.~~

• ~~"Inpatient hospitalization" means formal admission to the inpatient service of a hospital or an equivalent medical facility on an emergent basis for a work-related injury, or illness.~~

• ~~"Monetary penalties" are fines assessed against an employer for violations of safety and health requirements.~~

~~• "Probability" means a number that describes the likelihood that an injury, illness, or disease will occur ranging from 1 (lowest) to 3 (highest).~~

~~• "Severity" for purposes of calculating a penalty, means the most serious injury, illness, or disease that could be reasonably expected to occur, ranging from 1 (lowest) to 3 (highest), because of a hazardous condition.~~

~~• "Standard penalty" means any penalty that does not have an otherwise designated minimum amount.~~

~~• "WISHA" means the Washington Industrial Safety and Health Act.)~~

AMENDATORY SECTION (Amending WSR 19-01-097, filed 12/18/18, effective 1/21/19)

WAC 296-900-14005 Reasons for monetary penalties.

• DOSH **may** assess monetary penalties when a citation and notice is issued for any violation of safety and health rules or statutes.

• DOSH **will** assess monetary penalties under the following conditions:

- When a citation and notice is issued for a serious, repeat, willful, or egregious violation.

- When civil penalties are specified by statute as described in RCW 49.17.180.

Note: In addition to penalties specified by ((WISHA)) DOSH under chapter 49.17 RCW, there are penalties specified by other statutes, such as:

- Asbestos construction projects, RCW 49.26.016.
- Right to know (RTK)—SDS, RCW 49.70.190.
- Right to know—Penalty for late payment, RCW 49.70.177.
- Fire-resistant material applicators, chapter 49.105 RCW.

• The minimum civil penalties assessed by DOSH are:

- ((One hundred dollars)) \$100 for any standard penalty.

- ((Two thousand five hundred dollars)) \$2,500 per violation for serious violations contributing to a fatality.

- ((Five thousand dollars)) \$5,000 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)) Washington is required to equal the higher penalty amount to qualify as ((a)) an approved OSHA State Plan ((state)).

- ((Two hundred fifty dollars)) \$250 per day for asbestos good faith inspection (RCW 49.26.016 and 49.26.013).

AMENDATORY SECTION (Amending WSR 19-01-097, filed 12/18/18, effective 1/21/19)

WAC 296-900-14010 Base penalties. The base penalty rate will be adjusted for inflation every year based on the consumer price index for all urban consumers (CPI-U). The base penalty amount may also be increased by an additional two percent if DOSH is not within 25 percent of the national penalty average determined by the United States Occupational Safety and Health Administration (OSHA).

• DOSH calculates the base penalty for a violation by considering the following:

- Specific ((amounts)) factors that are dictated by statute;

OR

- By assigning a weight to a violation, called "gravity." Gravity is calculated by multiplying a violation's severity rate by its probability rate. Expressed as a formula:

$$\text{Gravity} = \text{Severity} \times \text{Probability}$$

Note: Most base penalties are calculated by the gravity method.

- Severity and probability are established in the following ways:

Severity:

- Severity rates are based on the most serious injury, illness, or disease that could be reasonably expected to occur because of a hazardous condition.

- Severity rates are expressed in whole numbers and range from 1 (lowest) to 3 (highest).

- Tables 3 and 4 are used to determine the severity rate for a violation.

**Table 3
Severity - Serious Violations**

3	<ul style="list-style-type: none"> • Death • Injuries involving permanent disability • Chronic, irreversible illness
2	<ul style="list-style-type: none"> • Disability of a limited nature • Injuries or reversible illnesses resulting in hospitalization
1	<ul style="list-style-type: none"> • Injuries or temporary, reversible illnesses resulting in serious physical harm • May require removal from exposure or supportive treatment without hospitalization for recovery

**Table 4
Severity - General Violations**

General violation
<ul style="list-style-type: none"> • Conditions that could cause injury or illness to an employee but would not result in serious physical harm

Probability:

Definition:

A probability rate is a number that describes the likelihood that an injury, illness, or disease will occur ranging from 1 (lowest) to 3 (highest). See Table 5.

- When determining probability, DOSH considers a variety of factors, depending on the situation, such as:

- Frequency and amount of exposure.
- Number of employees exposed.
- Instances, or number of times, the hazard is identified in the workplace.
- How close an employee is to the hazard, i.e., the proximity of the employee to the hazard.
- Weather and other working conditions.
- Employee skill level and training.
- Employee awareness of the hazard.
- The pace, speed, and nature of the task or work.
- Use of personal protective equipment.
- Other mitigating or contributing circumstances.

**Table 5
Probability**

3	<ul style="list-style-type: none"> If the factors considered indicate the likelihood of injury or illness would be relatively high.
2	<ul style="list-style-type: none"> If the factors considered indicate the likelihood of injury or illness would be moderate.
1	<ul style="list-style-type: none"> If the factors considered indicate an injury or illness could occur, but the likelihood would be relatively low.

- Table 6 is used to determine the dollar amount for each gravity-based penalty, unless otherwise specified by statute.

**Table 6
Gravity-Based Penalty - Serious Violations
Severity x Probability = Gravity**

9 High	(((\$7,000)) \$7,140 + Inflation Factor + 2% catch up to national penalty average, if needed
6	(((\$6,000)) \$6,120 + Inflation Factor + 2% catch up to national penalty average, if needed
4	(((\$4,000)) \$4,080 + Inflation Factor + 2% catch up to national penalty average, if needed
3	(((\$3,000)) \$3,060 + Inflation Factor + 2% catch up to national penalty average, if needed
2	(((\$2,000)) \$2,040 + Inflation Factor + 2% catch up to national penalty average, if needed
1 Low	(((\$1,000)) \$1,020 + Inflation Factor + 2% catch up to national penalty average, if needed

Note: Inflation factor will be adjusted each year based on the consumer price index for all urban consumers (CPI-U). The base penalty amount may also be increased by an additional two percent if DOSH is not within 25 percent of the national penalty average determined by the United States Occupational Safety and Health Administration (OSHA).

The minimum penalty for a standard serious violation = (~~one hundred dollars~~) \$100.

(A penalty is required by statute for a serious violation; where adjustments would result in a penalty below the minimum, the minimum will be applied.)

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~~) \$7,000, whichever is more.

Links:

- Occupational Safety and Health Administration—OSHA penalties.
- Occupational Safety and Health Administration 29 C.F.R. 1903.15 Proposed penalties.
- RCW 49.17.180 Violations—Civil penalties.

**Table 7
General Violations Penalty**

General violation (first time nonstatutory)	\$0
General violation base penalty	\$200

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.

AMENDATORY SECTION (Amending WSR 19-01-097, filed 12/18/18, effective 1/21/19)

WAC 296-900-14015 Base penalty adjustments.

- Tables 8 through 11 describe the various factors DOSH considers when adjusting a base penalty, and the effect on the fine.
 - The minimum adjusted base penalty for any standard violation carrying a penalty is (~~one hundred dollars~~) \$100.
 - The minimum adjusted penalty for serious violations contributing to a fatality is (~~two thousand five hundred dollars~~) \$2,500.
 - The minimum penalty for willful violations is (~~five thousand dollars~~) \$5,000 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.
 - 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~~) \$7,000, whichever is more.
- No adjustments are made to minimum penalty amounts specified by statute.

**Table 8
Employer Inspection History**

History Assessment	Penalty Adjustment
Above Average: Previous inspections with less than one serious violation on average and no willful, repeat, or failure to abate violations.	-10%
Average: No previous inspections or inspections with less than two serious violations on average.	None
Below Average: Previous inspections with willful, repeat, or failure to abate violations or inspections with two or more serious violations on average.	+10%

- History is based on the prior three years statewide.
- No reduction is given for violations classified as willful, repeat, failure to abate, or violations contributing to an inpatient hospitalization with an assigned gravity of 6 or 9 or any violations contributing to a fatality.

**Table 9
Good Faith**

Good Faith	Penalty Adjustment
Good	-20%
Average	None
Below Average	+20%

Based on:

- Evidence of an overall safety and health program, including a written accident prevention program (APP), other required written programs, training, etc.
- Efforts to fully communicate safety and health policies.
- Employees are clearly involved in the safety and health programs.
- Management's commitment at all levels is apparent.
- Employer's injury and illness rate.

No reduction is given for violations classified as willful, repeat, or failure to abate.

**Table 10
Abatement Quick-Fix Reduction**

Immediate correction of hazard provided such corrective action is substantial and not temporary or superficial	-15%
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No reduction is given for:

- Violations classified as willful, repeat, or failure to abate.
- Violations contributing to an inpatient hospitalization or fatality, or to any incidents resulting in serious injuries to employees.
- Blatant violations that are easily corrected or "abated" due to the short-term duration of work at a specific location.

**Table 11
Size of Workforce**

Number of Employees	Penalty Adjustment
1 - 10	-70%
11 - 25	-60%
26 - 100	-40%
101 - 250	-20%
251 or more	None

Based on workforce size nationwide.

AMENDATORY SECTION (Amending WSR 19-01-097, filed 12/18/18, effective 1/21/19)

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

- Tables 12 through 14 describe circumstances where an increase may be applied by DOSH to an adjusted base penalty.

**Table 12
Repeat Violations
(~~(increases the adjusted base penalty, after willful assessment)~~)**

1 st time x 2
2 nd time x 5
3 rd time x 8
4 th time x 12
5 th time x 15

History is based on the prior three years.

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~~) \$70,000, whichever is more.

Note: For repeat willful violations the repeat adjustment is applied after the willful assessment.

**Table 13
Willful Violations**

Multiply the adjusted based penalty by 10.
<ul style="list-style-type: none"> No reduction is given for good faith, history, or abatement quick-fix.

The minimum statutory penalty for willful violations is (~~five thousand dollars~~) \$5,000 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.

The maximum statutory penalty will be the maximum civil penalty established under the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or (~~seventy thousand dollars~~) \$70,000, whichever is more.

**Table 14
Failure to Abate**

Increases the adjusted base penalty:
Adjusted base penalty is multiplied by the number of calendar days past the correction date, with a minimum of five days.
<ul style="list-style-type: none"> No reduction in the base penalty is given for good faith, history, or abatement quick-fix.

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 (~~seven thousand dollars~~) \$7,000, whichever is more, per day if violation is not corrected.

**Table 15
Egregious Violation**

If the violation was willful and at least one of the following: <ul style="list-style-type: none"> The violations resulted in worker fatalities, a worksite catastrophe, or large number of injuries or illnesses. The violation resulted in persistently high rates of worker injuries or illnesses. 	<ul style="list-style-type: none"> The adjusted base penalty may be increased as follows: <ul style="list-style-type: none"> With a separate penalty issued for each instance, the employer fails to follow a specific requirement.
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- The employer has an extensive history of prior violations.
- The employer has intentionally disregarded its safety and health responsibilities.
- The employer's conduct taken as a whole amounts to clear bad faith in the performance of his/her duties.
- The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that might be in place.

**Table 16
Penalty Calculation Method**

- All penalty adjustments factors are summed.
- History: Up to a 10% reduction
 - Good Faith: Up to a 20% reduction
 - Quick-Fix: Up to a 15% reduction
 - Size: Up to a 70% reduction

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-150 Certifying violation corrections.

Summary:

Employer responsibility:

- (1) To certify that violations to safety and health requirements have been corrected.
- (2) To submit, if required:
 - (a) Additional information.
 - (b) Correction action plans.
 - (c) Progress reports.
- (3) To comply with correction due dates.
- (4) To tag cited moveable equipment to warn employees of a hazard.
- (5) To inform affected employees that each violation was corrected.

(You) The employer must meet the requirements...	in this section:
Certifying violation correction	WAC 296-900-15005
Violation correction action plans	WAC 296-900-15010
Progress reports	WAC 296-900-15015

((You)) The employer must meet the requirements...	in this section:
Timeliness of violation correction documents	WAC 296-900-15020
Inform employees about violation correction	WAC 296-900-15025
Tag moveable equipment	WAC 296-900-15030

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-15005 Certifying violation correction.

Definition:

A correction date is the date by which you must meet the (~~WI-SHA~~) DOSH requirements listed on either a: Citation and notice (C&N) or a corrective notice of redetermination (CNR).

(1) (~~((You))~~) The employer must certify in writing within (~~(ten)~~) 10 calendar days following the correction date shown on the C&N that each violation has been corrected. Include the following:

- (a) Employer name and address.
- (b) The inspection number involved.
- (c) The citation and item numbers which have been corrected.
- (d) The date each violation was corrected and the method used to correct them.
- (e) A statement that both:
 - (i) Affected employees and their representatives were informed that each violation was corrected; and
 - (ii) The information submitted is accurate.
- (f) Employer's signature or the signature of employer's designated representative.

Note: Certification is not required if the (~~(WISHA)~~) DOSH compliance officer indicates in the C&N, or a reassumption hearings officer indicates in a CNR, that they have already been corrected.

(2) (~~((You))~~) The employer must submit additional documentation for willful or repeated violations, demonstrating that (~~(they)~~) the violations were corrected. This documentation may include, but is not limited to:

- (a) Evidence of the purchase or repair of equipment.
 - (b) Photographic or video evidence of corrections.
 - (c) Other written records.
- (3) (~~((You))~~) The employer must submit additional documentation for serious violations when required in the C&N or CNR.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-15010 Violation correction action plans. (1)

(~~((You))~~) The employer must submit a written violation correction action plan within (~~(twenty-five)~~) 25 calendar days from the final order date when the citation and notice or corrective notice of redetermination requires it. Include all of the following in the violation correction action plan:

- (a) Identification of the violation.

- (b) The steps that will be taken to correct the violation.
- (c) A schedule to complete the steps.
- (d) A description of how employees will be protected until the corrections are completed.

What to expect from ((WISHA)) DOSH:

(2) ((WISHA)) DOSH will notify you in writing only if your plan is not adequate, and describe necessary changes.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-15015 Progress reports. (1) ((~~You~~)) The employer must submit written progress reports on corrections when required in the citation and notice (C&N) or corrective notice of redetermination (CNR), and briefly explain the:

- (a) Status of each violation.
- (b) Action taken to correct each violation.
- (c) Date each action has or will be taken.

What to expect from ((WISHA)) DOSH:

(2) ((WISHA)) DOSH will state in the C&N or CNR if progress reports are required, including:

- (a) Items that require progress reports.
- (b) Date when an initial progress report must be submitted. The initial progress report is due no sooner than ((~~thirty~~)) 30 calendar days after you submit a correction action plan.
- (c) Whether additional progress reports are required, and the dates by which they must be submitted.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-15020 Timeliness of violation correction documents.

What to expect from ((WISHA)) DOSH:

((WISHA)) DOSH will determine the timeliness of violation correction documents by reviewing the following:

- (1) The postmark date for documents sent by mail.
- (2) The date received by other means, such as personal delivery, email or fax.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-15025 Inform employees about violation correction.

(1) ((~~You~~)) The employer must inform employees about violation corrections by doing the following:

- (a) Post a copy of each violation correction document submitted to ((WISHA)) DOSH, or a summary, near the place where the violations occurred, if practical.

If posting near the place where the violation occurred is not practical, such as with a mobile work operation, post in a place read-

ily accessible to affected employees or take other steps to fully communicate actions taken to affected employees or their representatives.

(b) Keep violation correction information posted for at least three working days after submitting the correction documents to ((WISHA)) DOSH.

(c) Give notice to employees and their representatives on or before the date you submit correction information to ((WISHA)) DOSH.

(d) Make sure that all posted correction documents are not altered, defaced, or covered by other materials.

(2) ((You)) The employer must inform employees and their representatives of their right to examine and copy all correction documents submitted to ((WISHA)) DOSH.

If they ask to examine or copy documents within three working days of receiving notice that the documents were submitted to ((WISHA)) DOSH, provide access or copies no later than five days after receiving their request.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-15030 Tag moveable equipment. (1) ((You)) The employer must tag moveable equipment that has been cited to warn employees if a hazard has not been corrected, as follows:

(a) Attach a warning tag or a copy of the citation to the equipment's operating controls or to the cited component.

(b) For hand-held equipment, tag it immediately after you receive a citation.

(c) For other equipment, tag it before moving it within the work-site or between worksites.

Note: The tag should warn employees about the nature of the violation and tell them where the citation is posted.

Reference: For a sample tag that meets this requirement, go to helpful tools, sample tag for cited moveable equipment, in the resources section of this chapter.

(2) ((You)) The employer must make sure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other materials.

(3) ((You)) The employer must keep the tag or copy of the citation attached to movable equipment until one of the following occurs:

(a) Violations have been corrected and all certification documents have been submitted to ((WISHA)) DOSH.

(b) Cited equipment is permanently removed from service.

(c) The final order from an appeal vacates (voids) the violation.

Note: Safety standards for construction work, chapter 296-155 WAC, has information on warning tags. ((You)) The employer can use warning tags that meet those requirements instead of the warning tags required by this rule.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-160 More time to comply.

Summary:

((Your)) Employer responsibility:

To submit timely requests when more time is needed to correct violations. To post requests for more time for employees.

((You)) Employer must meet the requirements...	in this section:
Requesting more time to comply	WAC 296-900-16005
Post ((WISHA's)) DOSH's response to requests for more time	WAC 296-900-16010
Correction date hearing requests	WAC 296-900-16015
Post ((WISHA's)) DOSH's violation correction hearing notice	WAC 296-900-16020
Violation correction hearing procedures	WAC 296-900-16025
Post the violation correction hearing decision	WAC 296-900-16030

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-16005 Requesting more time to comply.

IMPORTANT:

~~((You))~~ The employer can request more time to correct violations if they:

1. Have made a good faith effort to correct the violation.

2. Have not corrected the violation because of factors beyond their control.

(1) ~~((You))~~ The employer must submit any requests for more time to correct violations in writing. Requests must be received or post-marked before midnight of the correction date shown on the citation and notice (C&N) or corrective notice of redetermination (CNR), and include:

(a) The business name.

(b) The address of the workplaces.

(c) The citation and the correction dates to be extended.

(d) The new correction date and length of correction period being requested.

(e) A description of the actions that have been, and are being, taken to meet the correction dates in the C&N or CNR.

(f) Factors preventing correction of violations by the date required.

(g) The means that will be used to protect employees while the violation is being corrected.

(h) Certification that the request for correction date extension has been posted, and if appropriate, certification that a copy was delivered to affected employees or their representatives.

(i) Employer's signature or the signature of the employer's representative.

(j) Date.

(2) ~~((You))~~ The employer must submit requests by one of the following methods:

(a) First class mail, postage prepaid to any L&I office.

(b) Take to any L&I office.

~~((c) Fax to the number shown in the C&N.)~~

Reference: For a list of the local offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

What to expect from ((WISHA)) DOSH:

(3) ((WISHA)) DOSH may accept late requests if they are both:

(a) Received within five days following the related correction date; and

(b) Accompanied by ((~~your~~)) a written statement explaining the exceptional circumstances that caused the delay.

Note: ((WISHA)) DOSH does not accept late requests when compliance activity has already started.

(4) ((WISHA)) DOSH may respond to telephone requests or personal conversations asking for more time to comply if timely, and followed up in writing within ((~~twenty-four~~)) 24 hours.

(5) ((WISHA)) DOSH may conduct an investigation before making a decision whether to grant a request for more time.

(6) ((WISHA)) DOSH will make a decision whether or not to grant the employer more time. Once made, the decision remains in effect unless an employee or employee representative requests a hearing.

(7) ((WISHA)) DOSH will keep the original correction date in effect unless a notice granting more time is sent.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-16010 Post ((WISHA's)) DOSH's response to requests for more time. (1) ((~~You~~)) The employer must post notices from ((WISHA)) DOSH approving additional time to correct citations, with the related citation, immediately upon receipt.

(2) ((~~You~~)) The employer must keep the notices posted until one of the following occur:

(a) The correction date has passed.

(b) A hearing notice is requested and posted.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-16015 Correction date hearing requests.

IMPORTANT :

1. Affected employees or their designated representatives may request a hearing if they disagree with ((WISHA's)) DOSH's decision to grant an employer more time to correct a violation.

2. Employers may request a hearing if ((WISHA)) DOSH denies their request for more time to correct a violation.

((~~You, your~~)) Employers, employees, or their representatives must send requests for hearings, if desired, in writing no later than ((~~ten~~)) 10 calendar days after the issue date of the notice granting more time to correct a violation to:

Mail to:

((~~Assistant Director for WISHA Services~~))

Department of Labor & Industries

Attn: ((WISHA)) DOSH Appeals

P.O. Box 44604

Olympia, WA 98504-4604

Fax to: 360-902-5581

Email to: DOSHappeals@lni.wa.gov

Take to any department service location.

Reference: For a list of the local offices, see the resources section of the Safety and health core rules, chapter 296-800 WAC.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-16020 Post ((WISHA's)) DOSH's violation correction hearing notice. ((You)) The employer must post ((WISHA's)) DOSH's hearing notice or a complete copy until the hearing is held, along with the:

(1) Citation containing the correction date for which more time was requested.

(2) ((Department)) DOSH notices issued in response to the employer's request for more time.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-16025 Violation correction hearing procedures.

What to expect from ((WISHA)) DOSH:

(1) After receiving a hearing request, the assistant director for ((WISHA)) DOSH services will appoint someone from ((WISHA)) DOSH to act as a hearings officer.

(2) The hearings officer:

(a) Will send a hearing notice to the employer and employee at least ((twenty)) 20 days before the hearing date that includes all of the following:

(i) A statement that all interested parties can participate in the hearing.

(ii) The time, date, and place of the hearing.

(iii) A short and clear explanation why a hearing was requested.

(iv) The nature of the proceeding, including the specific sections of the statute or rule involved.

(v) The legal authority and jurisdiction under which the hearing will be held.

(b) May discuss the material to be presented to determine how the hearing will proceed.

(3) An assistant attorney general may be present at the hearing to give legal advice to the hearings officer.

(4) The hearing will be conducted by either:

(a) The hearings officer; or

(b) The assistant attorney general, if requested by the hearings officer.

(5) After the hearing, ((WISHA)) DOSH will issue an order that either affirms or modifies the correction date that caused the hearing.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-16030 Post the violation correction hearing decision. ~~((You))~~ The employer must post a complete, unedited copy of the order affirming or modifying the correction date as soon as it is received, along with the applicable citation.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-170 Appeals.

Summary:

Employer responsibility:

To post information regarding appeals in a conspicuous area where notices to employees are normally posted.

((You)) <u>Employer</u> must meet the requirements...	in this section:
Appealing a citation and notice (C&N)	WAC 296-900-17005
Stay of abatement date request	WAC 296-900-17006
Appealing a corrective notice of redetermination (CNR)	WAC 296-900-17010
Posting appeals	WAC 296-900-17015

AMENDATORY SECTION (Amending WSR 17-22-117, filed 10/31/17, effective 1/1/18)

WAC 296-900-17005 Appealing a citation and notice (C&N).

IMPORTANT :

1. Employers may appeal C&Ns.
2. Employees of the cited employer, or their designated representatives, may only appeal abatement dates.
3. The filing of an appeal does not stay the abatement date for violations classified as serious, willful, repeat serious, or failure to abate serious. Employers may request a stay of abatement date for these classifications of violations when they appeal a C&N.

(1) ~~((You))~~ The employer must, when appealing, submit a written appeal to DOSH within ~~((fifteen working))~~ 15 business days after receiving the C&N. Include the following information:

- (a) Business name, address, and telephone number.
- (b) Name, address, and telephone number of any employer representative.
- (c) C&N number.
- (d) What you believe is wrong with the C&N and any related facts.
- (e) What you believe should be changed, and why.
- (f) Requests for stay of abatement date according to WAC 296-900-17006.
- (g) A signature and date.

(2) ~~((You))~~ The employer must send appeals in any of the following ways:

- Mail to:

((Assistant Director for DOSH Services))
Department of Labor & Industries
 Attn: DOSH Appeals
 P.O. Box 44604
 Olympia, WA 98504-4604

((~~Fax to: 360-902-5581~~))
 - Electronically to: DOSHAppeals@Lni.wa.gov
 - Take to any department service location.

Reference: See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.

Note: The postmark is considered the submission date of a mailed request.

(3) Employees or their designated representatives must, when appealing C&N abatement dates, submit a written request to DOSH within ((fifteen)) 15 working days after the C&N is received. Include the following information:

(a) Name of employee, address, telephone number.

(b) Name, address, and telephone number of any designated representative.

(c) C&N number.

(d) What is believed to be wrong with the abatement date.

(e) A signature and date.

(4) Employees or their designated representatives must send appeals in any of the following ways:

- Mail to:

((Assistant Director for DOSH Services))
Department of Labor & Industries
 Attn: DOSH Appeals
 P.O. Box 44604
 Olympia, WA 98504-4604

((~~Fax to: 360-902-5581~~))
 - Electronically to: DOSHAppeals@Lni.wa.gov
 - Take to any L&I service location.

Reference: See the resources section of the Safety and health core rules, chapter 296-800 WAC, for a list of the local offices.

Note: The postmark is considered the submission date of a mailed request.

What to expect from DOSH:

(5) After receiving an appeal, DOSH will do one of the following:

(a) Reassume jurisdiction over the C&N, and notify the person who submitted the appeal.

(b) Forward the appeal to the board of industrial insurance appeals. The board will send the person submitting the appeal a notice with the time and location of any board proceedings.

Definition:

Reassume jurisdiction. DOSH has decided to provide the employer with an informal conference to discuss their appeal.

(6) When reassuming jurisdiction over a C&N, DOSH has ((thirty)) 30 working days after receiving the appeal to review it, gather more information, and decide whether to make changes to the C&N. The review period:

(a) Begins the first working day after the appeal is received. For example, if an appeal is received on Friday, the ((thirty)) 30 days will begin on the following Monday unless it's a state holiday.

(b) May be extended up to ((forty-five)) 45 additional working days, if everyone involved agrees and signs an extension agreement within the initial ((thirty)) 30-day period.

- (c) Will include an informal conference about the appeal that is an opportunity for interested parties to:
 - (i) Briefly explain their positions.
 - (ii) Provide any additional information they would like DOSH to consider when reviewing the C&N.
 - (iii) Provide any additional information they would like DOSH to consider when reviewing stay of abatement date requests.

Note: DOSH might reassume jurisdiction over a C&N to do any of the following:

1. Provide an employer and affected employees an opportunity to present relevant information, facts, and opinions during an informal conference.
2. Give an employer, affected employees, and the department an opportunity to resolve appeals rapidly and without further contest, especially in routine compliance cases.
3. Educate employers about the C&N, the DOSH appeals process, and DOSH compliance.
4. Review citations, penalties, and abatement dates. Although informal, the conference is an official meeting and it may be either partially or totally recorded. Participants will be told if the conference is recorded.
5. Review requests to stay abatement dates.

(7) On or before the end of the (~~thirty working~~) 30 business day review period, or up to (~~seventy-five working~~) 75 business days if everyone involved agrees to the extension of up to (~~forty-five~~) 45 additional (working) business days, DOSH will issue and send a corrective notice to the employer, employees, and employee representatives participating in the appeal process of redetermination that:

- (a) Reflects any changes made to the C&N.
- (b) Grants or denies requests to stay abatement dates and includes the basis of the decision.
- (~~(c) Is sent to the employer, employees, and employee representatives participating in the appeal process.~~)

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-17010 Appealing a corrective notice of redetermination (CNR).

IMPORTANT :

1. Employers may appeal CNRs.
2. Employees who could be affected by a CNR, or their designated representatives, may appeal abatement dates.
3. Employers must renew requests to stay abatement dates if a stay request is denied when they appeal CNRs.

(1) You must appeal a CNR, if desired, in writing within (~~fifteen~~) 15 working days after it was received (~~to the~~):

Electronically to: BIIA.wa.gov

Via mail to:

Board of Industrial Insurance Appeals
 2430 Chandler Court S.W.
 P.O. Box 42401
 Olympia, WA 98504-2401

(2) You must send a copy of the appeal to the CNR to the:

(~~(Assistant Director for DOSH Services)~~)

Department of Labor & Industries

Attn: DOSH Appeals
 P.O. Box 44604
 Olympia, WA 98504-4604

(~~(Fax to: 360-902-5581)~~)

Email to: DOSHAppeals@Lni.wa.gov

Take to any department service location.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-17015 Posting appeals. (~~You~~) The employer must immediately post notices and information related to any appeal or stay of abatement date request in the same place where DOSH citation and notices (C&Ns) are posted. These notices and information include:

- (1) The notice of appeal, until the appeal is resolved.
- (2) Notices about DOSH reassuming jurisdiction, and any extension of the review period until the end of review period.
- (3) A notice of an informal conference until after the conference is held.
- (4) A corrective notice of redetermination for as long as C&Ns are to be posted.

Reference: For C&N posting requirements, see Posting citation and notices, WAC 296-900-13015.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-17505 Scope and purpose. (1) The program for safety and health investment projects (SHIP) was established during the 2011 legislative session to provide funding for safety and health projects for workplaces insured for workers' compensation through the department's state fund. The purpose of these projects shall be to: Prevent workplace injuries, illnesses, and fatalities; create early return to work programs; and reduce long-term disability through the cooperation of employers and employees or their representatives.

- (2) Funds for awards shall be distributed as follows:
 - (a) At least (~~twenty-five~~) 25 percent for projects designed to develop and implement innovative and effective return-to-work programs for injured workers;
 - (b) At least (~~twenty-five~~) 25 percent for projects that specifically address the needs of small businesses; and
 - (c) At least (~~fifty~~) 50 percent for projects that foster workplace injury and illness prevention by addressing priorities identified by the department in cooperation with the (~~Washington Industrial Safety and Health Act~~) WISHA advisory committee and the workers' compensation advisory committee.

AMENDATORY SECTION (Amending WSR 12-03-090, filed 1/17/12, effective 3/1/12)

WAC 296-900-17520 Advisory committee. (1) The department will create a SHIP advisory committee (SAC) that will be a subcommittee of the WISHA advisory committee and will advise the department on program policy issues and participate in the grant application review process. The SAC will have eight to (~~ten~~) 10 members, including equal numbers of employer and employee representatives, and others with relevant experience and expertise. Members will be appointed to serve three-year

renewable terms by the assistant director of (~~the division of occupational safety and health~~(~~+~~))DOSH(~~(+)~~). The initial term for half of the first group of appointees will be (~~(eighteen)~~) 18 months. SAC membership will include:

(a) At least one employer representative from the WISHA advisory committee or an employer representative recommended by the WISHA advisory committee employer representatives; and

(b) At least one employee representative from the WISHA advisory committee or an employee representative recommended by the WISHA advisory committee employee representatives.

(2) The SAC will be supplemented by ad hoc grant review committees consisting of selected members of the SAC together with other individuals with experience and expertise in the specific topic areas under review. Members of such ad hoc grant review committees will be appointed by the assistant director for DOSH, taking into consideration recommendations from the SAC and WISHA advisory committee.

(3) All meetings of the SAC will be convened and chaired by the assistant director for DOSH or designee.

(4) The SAC will provide the following assistance:

(a) Advice on SHIP policy issues to DOSH and the WISHA advisory committee;

(b) Make recommendations to DOSH and the WISHA advisory committee regarding funding priority areas;

(c) Review and comment on funding recommendations made by grant review committees to the assistant director of DOSH;

(d) Keep records of the SACs decisions;

(e) Develop and maintain communication networks in the community.

(5) SAC and grant review committee members will disclose to the department any potential conflicts of interest with specific project applications, whether direct or indirect. The department will determine whether a member's connection to a project should result in recusal from voting on the project. The department's decision and reasons supporting the decision will be documented in the meeting minutes.

(6) SAC and grant review committee members will not disclose any information about applications to anyone not authorized access to the information by law or regulation.

AMENDATORY SECTION (Amending WSR 12-03-090, filed 1/17/12, effective 3/1/12)

WAC 296-900-17525 Application. (1) The department will periodically prepare grant application packets that will be available on the department's website.

(2) Applicants must complete the entire application to be considered for project funding. Incomplete applications or those submitted after a posted deadline will not be considered for funding.

(3) Some funding cycles may include limitations on the maximum amount that will be awarded for any proposal. Limitations, if any, will be posted on the department's website or in current application packets.

(4) All products developed as a result of an approved SHIP project belong in the public domain and their dissemination and use shall not be restricted in any way. Such products may not be copyrighted, patented, claimed as trade secrets, or otherwise restricted in any other way. The department retains the right to publish or other-

wise disseminate these products as the department in its sole discretion deems appropriate.

(5) The department will not use information contained in submitted application packets as the basis for the initiation of compliance inspections or the issuance of citations and/or penalties to applicants, (~~under WISHA,~~) chapter 49.17 RCW. However, employers are not exempt from compliance inspections initiated for other reasons because they submitted an application packet.

(6) Projects may include, but are not limited to:

(a) The development and implementation of innovative and effective return-to-work programs for injured workers;

(b) The development of technical innovation and engineering controls for the recognition and control of workplace hazards;

(c) Best practices for workplace safety and health programs;

(d) Education and training;

(e) Efforts that address the needs of small businesses;

(f) Priorities identified by DOSH in cooperation with the WISHA advisory committee and the workers' compensation advisory committee;

(g) Initiatives intended to build organizational capacity in workplace safety and health; and

(h) Other projects that foster injury and illness prevention through cooperation between employers and employees or their representatives.

AMENDATORY SECTION (Amending WSR 12-03-090, filed 1/17/12, effective 3/1/12)

WAC 296-900-17535 Monitoring. DOSH staff will monitor projects for compliance with award terms and achievement of approved project milestones and(~~or~~) outcomes.

(1) Milestones are intermediate targets or goals that are defined in the project applications. Ongoing funding will be tied to the achievement of approved milestones (including, but not limited to, accounting for grant funds).

(2) Outcomes are the final products that will be produced by the project.