

**WISHA Interim Operations Memorandum**  
**Washington Department of Labor and Industries**  
**#99-1-F**  
**GROUPING OF WISHA VIOLATIONS**

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**Background**

The regulatory standards adopted to implement Title 49.17 RCW, the Washington Industrial Safety and Health Act (WISHA), cover a wide range of situations in varying levels of detail. In certain circumstances, enforcement staff may identify violations of more than one specific requirement that should be grouped together, rather than cited as separate violations.

Such “grouping,” which involves more than one requirement, is distinct from “combining” multiple instances of the same code violation (see WISHA Compliance Manual, IV.B.6.a). Grouping occurs for one of two reasons: Either the violations are so closely related to one another that a single action by the employer necessarily corrects them both (and therefore they logically represent only one violation, although it is described by two or more specific codes); or the violations, when taken together, represent a more serious hazard than any of them do individually.

One of the keys to appropriate grouping is in the appropriate identification of violations. In order to group correctly, the inspector must first ensure that he or she has identified the most specific citable violations that accurately describe the hazards encountered in the inspection. If specific requirements have been violated and are being cited, more general requirements that also reflect the same condition should not be cited.

The decision whether to group should not be based on the source of potential or actual injury; instead, a grouped violation should describe a single act or failure to act on the part of the employer.

Grouping policy has previously been addressed as part of the WISHA Compliance Manual (see IV.B.6.b and IV.B.6.c), as well as in policies developed to address specific enforcement issues. Because of recent questions and an interest in ensuring that grouping is approached in a consistent manner, this memorandum replaces and rescinds all previous grouping policy, wherever located.

**Policy**

1. *When should WISHA enforcement staff group related violations because they are so closely related that a single action by the employer necessarily corrects them both?*
  - a. The inspector must group violations (whether classified as serious or general) if correcting one of the violations would *necessarily* correct the other violation(s). Closely related but distinct violations may work together to increase the risk of a particular injury. In such a case, they would represent *separate* citable violations unless correcting one of them would necessarily correct the others.

*For example, WAC 296-307-08018(2) requires employers to train employees who operate tractors in agriculture in a number of things, including the topographical*

*features of the land where the tractor will be operated. WAC 296-307-08006 requires that the employer provide a rollover protective structure (ROPS) on most tractors used in agriculture. Clearly, both standards are intended to protect the employee from the hazard of being thrown from or crushed by the tractor in a tractor rollover. But they represent separate requirements, involving separate actions by the employer, that are intentionally designed to provide multiple layers of protection to the employee; if both violations are present in a single inspection they must be cited separately.*

*As a further example, if an inspector has identified a violation of WAC 296-24-56511(2) because the exit doors are not of the proper type, a violation of WAC 296-24-56507 because the exits are insufficient for the occupant load, and a violation of WAC 296-24-55005(5) because the exits are not marked appropriately, each represents a separate violation although they all relate to the ability of employees to exit the building successfully in the event of an emergency (it is not necessary or appropriate to cite WAC 296-24-55005(1) and WAC 296-24-55005(2) because of their general provisions requiring safe and sufficient exits; such general requirements must be cited only when more specific requirements do not apply).*

*Similarly, if an inspector has documented violations of WAC 296-24-16515(1) because of the lack of a hood on a swing cutoff saw and of WAC 296-24-16527 because the shaper is not enclosed with a cage or adjustable guard, the two violations would be cited separately and not grouped; it would be unnecessary and inappropriate to cite WAC 296-24-15001(1) and WAC 296-24-15001(3)(b) because of their general requirements for point-of-operation guarding. Again, the general requirement would be appropriately cited only in relation to a machine for which there were no specific requirements.*

*In contrast, violations of the training requirements of WAC 296-155-24505(3)(a) and those of WAC 296-24-040(1)(a) as they relate to initial training of a roofing crew would necessarily be abated by the same action on the part of the employer and would therefore appropriately be grouped.*

*In a similar fashion, an inspector might choose to cite both the respirator selection requirements of Chapter 296-62, Part E and the personal protective equipment requirements of Chapter 296-62, Part P, after documenting an employer's failure to provide an appropriate respirator to an employee working on a hazardous waste site. In such a case, the two violations would appropriately be grouped, since both would necessarily be corrected by selection of an appropriate respirator (or any other method of addressing the hazard).*

- b. The guidance in “a” above can also be applied to program violations, with the following additional clarifications:
- i. Violations of separate program standards must not normally be grouped with one another or with the accident prevention program standard (if the only problem with the accident prevention program is that it lacks a specific element, such as the hazard communication program, then only the specific element must be cited).

*For example, if an employer has no accident prevention program, violating WAC 296-24-040, and also engages in activity requiring a lockout/tagout (“energy control”) program under WAC 296-24-11005(1), the inspector has documented and must cite two separate violations. Similarly, the same employer’s failure to develop and maintain a written hazard communication program, as required by WAC 296-62-05409(1), would represent yet another separate violation.*

*Similarly, if the employer has no written hazard communication program as required by WAC 296-62-05409, fails to provide material safety data sheets required by WAC 296-62-05413, and fails to provide initial training to employees as required by WAC 296-62-05415, each violation must be cited separately.*

*On the other hand, documented violations of WAC 296-24-040(2) and of WAC 296-307-030(4), both of which describe the lack of a written Accident Prevention Program, for an employer who has operations covered by both the agriculture and the general industry standards would appropriately be grouped (it is normally not necessary to cite the specific industry violation if WAC 296-24-040 is being cited; in the case of agriculture, it is important to ensure that the vertical standard is also cited if the employer lacks a written program).*

- ii. In cases where violations of a written program requirement relate to other documented violations, the inspector must not group the program violations with the other documented violations (if he or she is merely citing “deficiencies” in an existing program based solely on the other documented violations, the program violation must not be cited but instead dropped in favor of the more specific violations). The only exception to this is the Fall Protection Work Plan requirement in WAC 296-155-24505, which must be grouped with the most serious of the related violations.

*For example, if an employer has no written lockout-tagout program as required by WAC 296-24-11005(1) and the inspector also documents violations of the requirement to use lockout devices in accordance with WAC 296-24-11007(2), the program violation would be cited separately from the specific violations of the lockout application requirements.*

*Similarly, if an employer violates the written respirator program requirements of WAC 296-62-07109(1) and the inspector also discovers that the respirators have been modified in violation of WAC 296-62-07109(4) and that the respirator users have not been properly fitted in accordance with WAC 296-62-07113(3), each violation would be cited separately.*

- c. In determining whether to group one or more violations, the inspector must *not* consider
- \* the probability and severity of injury (other than as described in “2” below);
  - \* the overall severity of the situation (other than as described in “2” below);
  - \* the employer’s ability to pay (which is addressed in the context of employer size in the penalty calculation, and through settlement policies when necessary);
  - \* the employer’s demonstrated good faith and/or history (which are each addressed separately within the penalty calculation); or
  - \* the effect of the decision to group or not to group on inspection statistics.
2. *Are there any other times enforcement staff should group documented violations of WISHA standards?*

With the exception of the circumstances described in “1” above, the only other times that WISHA enforcement staff are permitted to group documented violations are as follows:

- a. When an inspector determines that two or more general violations, taken together, create a substantial probability of death or serious physical harm, they should be grouped and cited as serious.
- Except as provided in “1” above, multiple serious violations should not be grouped to create a “higher gravity” serious violation, nor should multiple general violations be grouped except when the grouping becomes a serious violation. General and serious violations also should not be grouped to create a higher gravity serious violation. This *does not* prevent the inspector from considering the interplay between related violations in determining probability and severity of those violations (the presence of multiple violations may in fact increase the probability and severity of each of those individual violations beyond what would exist if it were the only item being cited).
- b. When an inspector documents multiple violations of posting or recordkeeping requirements that involve the same document (for example, the OSHA 200 Form was neither posted nor maintained).
3. *How should penalties be calculated for grouped violations?*
- a. For violations grouped in accordance with “1” above, the penalty would normally be the same for any one of the violations in the group, or for all of them taken together.
- b. When general violations have been grouped in accordance with “2.a” above, the penalty calculation must reflect the group taken as a whole.
- c. When violations have been grouped in accordance with “2.b” above, penalties must be issued in accordance with the WISHA Compliance Manual (V.C.2.p).
4. *How should penalties be recorded on the WISHA-2 for grouped violations?*
- If penalties are to be assessed for grouped violations (which usually will be the case), the penalty must be written across from the first violation item appearing on the WISHA-2.

5. *How should repeat or failure-to-abate violations be handled?*

If violations have been grouped in accordance with the guidance in this policy, any repeat or failure-to-abate determination will apply to the entire group. If more than one such determination is made, the most severe determination will apply.

*For example, if an employer is being cited for the lack of fall protection for the fifth time and the lack of a fall protection work plan for the second time, the two violations would be grouped in accordance with the guidance in “1.b.ii” above and cited as a five-time repeat. If the lack of fall protection is being cited for the first time and the lack of the fall protection work plan is a three-time repeat, the grouped violation would be a three-time repeat (even though the fall protection work plan violation would ordinarily be cited as a general violation if it is a stand-alone violation).*

*NOTE: The flowchart accompanying this policy provides a “decision matrix” consistent with the guidance provided in the policy.*