



# PROPOSED RULE MAKING

**CR-102 (June 2024)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

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FILED

DATE: September 03, 2024

TIME: 9:01 AM

WSR 24-18-095

**Agency:** Department of Labor & Industries (L&I)

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR** 24-09-063 ; or

**Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_; or

**Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

**Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) Monetary Penalties and Appeals. Chapter 296-900, Administrative Rules.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
October 9, 2024	9:30 a.m.	Virtual and telephonic hearing <b>To join electronically:</b> <a href="https://lni-wa-gov.zoom.us/j/84561146952?pwd=TOg0gp7W5v0nfrAmT6jxGxSYmjSsyZ.1">https://lni-wa-gov.zoom.us/j/84561146952?pwd=TOg0gp7W5v0nfrAmT6jxGxSYmjSsyZ.1</a> <b>To join by phone (audio only):</b> 253-215-8782 Meeting ID: 845 6114 6952 Passcode: 9309637529	A pre-hearing 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.
October 10, 2024	3:00 p.m.	Virtual and telephonic hearing <b>To join electronically:</b> <a href="https://lni-wa-gov.zoom.us/j/84650759832?pwd=y8Qu8GblBg593CHGryDnK6urbhmLWG.1">https://lni-wa-gov.zoom.us/j/84650759832?pwd=y8Qu8GblBg593CHGryDnK6urbhmLWG.1</a> <b>To join by phone (audio only):</b> 253-215-8782 Meeting ID: 846 5075 9832 Passcode: 8256498162	A pre-hearing 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 (Note: This is **NOT** the effective date)

**Submit written comments to:**

Name Carmyn Shute, Administrative Regulations Analyst

Address Department of Labor & Industries  
Division of Occupational Safety and Health  
PO Box 44620  
Olympia, WA 98504-4620

Email [Carmyn.Shute@Lni.wa.gov](mailto:Carmyn.Shute@Lni.wa.gov)

Fax 360-902-5619

Other

Beginning (date and time) September 4, 2024, 8:00 a.m.

By (date and time) 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

TTY

Email [Carmyn.Shute@Lni.wa.gov](mailto:Carmyn.Shute@Lni.wa.gov)

Other

By (date) October 1, 2024

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Division of Occupational Safety and Health (DOSH) initiated this rulemaking 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 2 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 rulemaking 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

**Is rule necessary because of a:**

Federal Law?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Name of proponent:** (person or organization) United States Occupational Safety and Health Administration (OSHA)

**Type of proponent:**  Private.  Public.  Governmental.

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting	Tracy West	Tumwater, WA	509-237-2372
Implementation	Craig Blackwood	Tumwater, WA	360-902-5828
Enforcement	Craig Blackwood	Tumwater, WA	360-902-5828

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name  
Address  
Phone  
Fax  
TTY  
Email  
Other

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

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

Name  
Address  
Phone  
Fax  
TTY

Email

Other

No: Please explain: 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.[]

**Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570](#)(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(3). Check all that apply:

- |   |   |
|---|---|
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations)         | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)             | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(4). (Does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of how the above exemption(s) applies to the proposed rule:

**(2) Scope of exemptions:** *Check one.*

The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.

The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)): 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 rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. 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.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name

Address

Phone  
Fax  
TTY  
Email  
Other

**Date:** September 3, 2024

**Name:** Joel Sacks

**Title:** Director

**Signature:**

