



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: October 23, 2018

TIME: 10:23 AM

WSR 18-21-170

**Agency:** Department of Labor and Industries

**Original Notice**

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

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

**Preproposal Statement of Inquiry was filed as WSR 18-17-152 ; 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) Chapter 296-900 WAC, Administrative rules. WAC 296-900-140 through 296-900-14020 – Monetary penalties.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
November 28, 2018	1:00 pm	Department of Labor and Industries 7273 Linderson Way SW, Room S119 Tumwater, WA 98501	

**Date of intended adoption:** December 18, 2018 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Cynthia Ireland  
Address: Post Office Box 44620, Olympia, WA 98504  
Email: [cynthia.ireland@lni.wa.gov](mailto:cynthia.ireland@lni.wa.gov)  
Fax: (360) 902-5619  
Other:  
By (date) December 5, 2018

**Assistance for persons with disabilities:**

Contact Cynthia Ireland  
Phone: (360) 902-5522  
Fax: (360) 902-5619  
TTY: N/A  
Email: [cynthia.ireland@lni.wa.gov](mailto:cynthia.ireland@lni.wa.gov)  
Other:  
By (date) November 14, 2018

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** This rulemaking is a result of the recent amendment to RCW 49.17.180 during the 2018 legislative session under Chapter 128, Laws of 2018 (Substitute House Bill 1953). The rulemaking under consideration will adopt the recent amendment to RCW 49.17.180 which retains the current penalty maximums for all violations and the minimum for willful violations in statute unless required to be higher by the Federal Occupational Safety and Health Act (OSHA). The proposed rules set up an annual adjustment system to match OSHA's penalty levels. Below are the proposed amendments:

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

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

**WAC 296-900-14005 Reasons for monetary penalties.**

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

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

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

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

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

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

- Add language relating to the maximum statutory penalty to match the recent change to RCW 49.17.180. It reads, “The maximum statutory penalty will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seventy thousand dollars, whichever is more.
- Add language relating to the minimum statutory penalty for willful violations to match the recent change to RCW 49.17.180. It reads, “The minimum statutory penalty for willful violations is five thousand dollars per violation unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state”.

**Reasons supporting proposal:**

In 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act requiring several federal agencies, including OSHA, adjust their maximum and minimum penalties for inflation on an annual basis. OSHA is required to publish the annual penalty adjustments in rule no later than January 15<sup>th</sup> of each year and the adjustments are effective upon publication of the rules.

States that operate their own Occupational Safety and Health Plans are required to adopt maximum penalty levels that are at least as effective as Federal OSHA's. Therefore, it will not require the department to adjust the current formula used to determine actual civil penalty amounts assessed.

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

**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: 29 U.S.C. 667, 29 C.F.R. 1902.4(c)(2)(xi), 29 C.F.R. 1902.37(b)(12), 29 C.F.R. 1903.15, and RCW 49.17.180

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

**Name of proponent:** (person or organization) Department of Labor and Industries  Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Chris Miller	Tumwater, WA	(360) 902-5516
Implementation:	Anne Soiza	Tumwater, WA	(360) 902-5090
Enforcement:	Anne Soiza	Tumwater, WA	(360) 902-5090

**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 rule is exempt from the cost-benefit analysis requirement under RCW 34.05.328(5)(b)(iii) because it adopts federal and state law. This rulemaking is a result of the recent amendment to RCW 49.17.180 during the 2018 legislative session under Chapter 128, Laws of 2018 (Substitute House Bill 1953). The rulemaking under consideration will adopt the recent amendment to RCW 49.17.180 which retains the current penalty maximums for all violations and the minimum for willful violations in statute unless higher amounts required by OSHA. 29 U.S.C. 667 requires OSHA-approved State Plans to have standards and an enforcement program that are at least as effective as federal OSHA's standards and enforcement program. OSHA-approved State Plans must have maximum and minimum penalty levels that are at least as effective as federal OSHA's under 29 U.S.C. 667, 29 C.F.R. 1902.4(c)(2)(xi), and 29 C.F.R. 1902.37(b)(12). State Plans are required to increase their penalties in alignment with OSHA's penalty increases under 29.C.F.R. 1903.15 to maintain at least as effective penalty levels.

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**  
This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). 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: 29 U.S.C. 667 requires OSHA-approved State Plans to have standards and an enforcement program that are at least as effective as federal OSHA's standards and enforcement program. OSHA-approved State Plans must have maximum and minimum penalty levels that are at least as effective as federal OSHA's under 29 U.S.C. 667, 29 C.F.R. 1902.4(c)(2)(xi) and 29 C.F.R. 1902.37(b)(12). State Plans are required to increase their penalties in alignment with OSHA's penalty increases annually adopted under 29.C.F.R. 1903.15 to maintain at least as effective penalty levels. This

rulemaking is a result of the recent amendment to RCW 49.17.180 during the 2018 legislative session under Chapter 128, Laws of 2018 (Substitute House Bill 1953). The rulemaking under consideration will adopt the recent amendment to RCW 49.17.180 which retains current penalty maximums for all violations and the minimum for willful violations in statute unless required to be higher by the Federal OSHA.

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"/> RCW 34.05.310 (4)(b)<br>(Internal government operations)        | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)  |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)           | <input type="checkbox"/> RCW 34.05.310 (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 \_\_\_\_\_.

Explanation of exemptions, if necessary: The rulemaking under consideration will adopt the recent amendment to RCW 49.17.180 which retains the current penalty maximums for all violations and the minimum for willful violations in statute unless higher amounts required by OSHA. The proposed rule incorporates by reference OSHA's rule establishing annual penalty amounts in rule (29.C.F.R. 1903.15).

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If 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 analysis showing how costs were calculated. \_\_\_\_\_

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert 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:** October 23, 2018

**Name:** Joel Sacks

**Title:** Director

**Signature:**

