



PROPOSED RULE MAKING

CR-102 (June 2024) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: October 18, 2024

TIME: 8:38 AM

WSR 24-21-102

Agency: Department of Health

Original Notice

Supplemental Notice to WSR

Continuance of WSR

Preproposal Statement of Inquiry was filed as WSR 24-13-109 ; 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) Large On-Site Sewage System Rules – Establishing a civil penalty schedule in WAC 246-272B-08105.

The Department of Health is proposing to establish a civil penalty schedule for violations of a law or rule regulating large on-site sewage systems. This proposed rule is necessary to clarify the department's penalties based on significance of the violation, previous compliance record, and the presence of aggravating or exacerbating circumstances.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
December 18, 2024	8:00am	<p>In-person location: Department of Health Town Center 2, Rooms 166 111 Israel Road SE Tumwater, WA 98501</p> <p>Virtual: Register in advance for this webinar: https://us02web.zoom.us/webinar/register/WN_AmmWroVaStmIPMy2Y3-c6A After registering, you will receive a confirmation email containing information about joining the webinar.</p>	Individuals may attend the rules hearing either in person or virtually.

Date of intended adoption: December 27, 2024 (Note: This is NOT the effective date)

Submit written comments to:

Name Department of Health c/o Ashlie Laydon
 Address PO Box 47822, Olympia, WA 98504-7822
 Email ashlie.laydon@doh.wa.gov
 Fax N/A
 Other
 Beginning (date and time) Date and time of filing
 By (date and time) December 18, 2024 by 11:59pm

Assistance for persons with disabilities:

Contact Ashlie Laydon
 Phone
 Fax
 TTY 711
 Email ashlie.laydon@doh.wa.gov
 Other
 By (date) December 4, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed rule establishes a civil penalty schedule to protect public health and the environment by ensuring large on-site sewage systems are properly designed, operated, and maintained.

Reasons supporting proposal: A civil penalty schedule, in rule, provides transparency in how the department calculates the penalty amount and serves as a deterrent to future noncompliance. Protection of public health and the environment requires properly designed, operated, and maintained on-site sewage systems. Failure of these systems can pose certain health and environmental hazards if sewage is not adequately treated, leaks above ground creating a potential of direct or indirect contact with the public, or if untreated sewage reaches surface or groundwater.

Statutory authority for adoption: RCW 70A.115.040

Statute being implemented: RCW 70A.115.050

Is rule necessary because of a:

- Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Department of Health

Type of proponent: Private. Public. Governmental.

Name of agency personnel responsible for: Department of Health

Name	Office Location	Phone
Drafting Ashlie Laydon	111 Israel Rd SE, Tumwater, WA 98501	N/A
Implementation Andrew Jones	111 Israel Rd SE, Tumwater, WA 98501	(360) 742-9233
Enforcement Andrew Jones	111 Israel Rd SE, Tumwater, WA 98501	(360) 742-9233

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

If yes, insert statement here: N/A

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 Ashlie Laydon
 - Address PO Box 47822 Olympia, WA 98504-7822
 - Phone
 - Fax
 - TTY 711
 - Email ashlie.laydon@doh.wa.gov
 - Other
- No: Please explain:

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:

[RCW 34.05.310](#) (4)(b)
(Internal government operations)

[RCW 34.05.310](#) (4)(e)
(Dictated by statute)

[RCW 34.05.310](#) (4)(c)
(Incorporation by reference)

[RCW 34.05.310](#) (4)(f)
(Set or adjust fees)

[RCW 34.05.310](#) (4)(d)
(Correct or clarify language)

[RCW 34.05.310](#) (4)(g)
((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](#)):

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.

The proposed rule does not impose any costs if a business is compliant with chapter 70A.115 RCW and chapter 246-272B WAC. RCW 70A.115.050 gives the department the authority to assess a penalty of not more than \$10,000 per day for each violation. The proposed rule establishes a civil penalty schedule, in rule, to outline how the department will calculate civil penalties based on the significance of the violation, previous compliance record, and the presence of aggravating or exacerbating circumstances.

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: October 18, 2024

Name: Kristin Peterson, JD for Umair A. Shah, MD, MPH

Title: Chief of Policy for Secretary of Health

Signature:

A handwritten signature in cursive script, appearing to read "Kristin Peterson".

NEW SECTION

WAC 246-272B-08105 Civil penalty schedule. (1) The department calculates penalties based on:

- (a) The significance of the violation;
- (b) Previous compliance record; and
- (c) The presence of aggravating or exacerbating circumstances.

(2) Significance of violation. The department determines significance of the violation based on risk:

(a) Low. Low risk violations do not affect the function of the LOSS and have a low potential to threaten public health or the environment.

(b) Medium. Medium risk violations are those relating to reporting requirements of LOSS function, including monitoring, operation, and maintenance of the LOSS and do not present an immediate threat to public health or the environment.

(c) High. High risk violations are those relating to the functioning of the LOSS and present an immediate threat to public health or the environment.

(3) Previous compliance record. The department considers any notice of violation issued to the person responsible for compliance with LOSS requirements in the past five years when calculating a penalty.

(4) Penalty schedule.

Number of Notice of Violations in the past 5 years	Low Risk	Medium Risk	High Risk
0	\$250	\$500	\$1,000
1	\$350	\$700	\$1,400
2	\$450	\$900	\$1,800
3	\$550	\$1,100	\$2,200
4	\$650	\$1,300	\$2,600
5 or more	\$750	\$1,500	\$3,000

(5) Aggravating or exacerbating circumstances. The department can also consider circumstances that aggravate or exacerbate the harm or risk to people or the environment. The violation can be aggravated or exacerbated by an existing circumstance, or the violation can aggravate or exacerbate an existing circumstance related to the system or its operation. Aggravating or exacerbating circumstances can include, but are not limited to, the following factors:

(a) The extent to which there is a history of unaddressed permit conditions;

(b) The extent that other actions or inactions by the owner or their representative contribute to the severity of the risk to public health or the environment posed by the violation; and

(c) The length of time that factors (a) or (b) of this subsection have been present for the system.

(6) If the department determines that one or more aggravating or exacerbating factors are present, then the department may increase the penalty to a level greater than listed in the penalty schedule.

(7) The maximum civil penalty that may be imposed by the department is \$10,000 per day for each violation.

(8) The department considers each violation to be a separate and distinct event. Each day a violation is continued is a separate and

distinct violation. When a person has committed multiple violations, the violations are cumulative for the purpose of calculating the appropriate penalty. Penalties are added together, rather than served concurrently.

(9) Nothing in this section prevents the department from responding to a violation by:

(a) Declining to pursue a civil penalty;

(b) Issuing a notice of correction instead of pursuing a civil penalty; or

(c) Negotiating settlement of a case on such terms and for such reason as the department deems appropriate. Violations covered by a prior settlement agreement may be used for the purpose of determining the appropriate penalty for the current alleged violation(s), unless prohibited by the prior settlement agreement.