



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

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OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 21, 2018

TIME: 11:59 AM

WSR 18-05-101

Agency: Department of Enterprise Services

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-16-176 ; 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) Debarment Procedures.

The proposed rules provide an option, at the discretion of Enterprise Services, to fine in lieu of debarment for certain statutory causes that otherwise could be a basis for debarment. A fine in lieu of debarment, if timely paid, would not be a debarment order. Of the numerous enumerated statutory reasons for debarment, fines in lieu of debarment could be available for:

- o *Serious Contract Violations*: "Violation of contract provisions, as set forth in this subsection, of a character that is regarded by the director to be so serious as to justify debarment action: (i) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or (ii) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, however the failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment[.]". See RCW 39.26.200(2)(e).
- o *Ethic Violations*: "Violation of ethical standards set forth in RCW 39.26.020[.]" See RCW 39.26.200(2)(f).

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
March 27, 2018	10 am to 12 pm	Room 1213, 1500 Jefferson, Olympia, WA	

Date of intended adoption: April 13, 2018 (Note: This is NOT the effective date)

Submit written comments to:

Name: Jack Zeigler

Address:

Email:

Fax:

Other: Online at: <https://www.surveymonkey.com/r/DebarmentFines>

By (date) March 30, 2018

Assistance for persons with disabilities:

Contact Jack Zeigler

Phone: 360-407-9209

Fax:

TTY:

Email: jack.zeigler@des.wa.gov

Other:

By (date) March 20, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: In 2015, the Washington State Legislature amended Washington's procurement code to provide Enterprise Services additional authority, within the context of debarment, to correct behavior through fines in lieu of debarment. See [2015 c 44](#) (SHB 1447 amends RCW 39.26.200, which passed the House 96-1 and passed the Senate 49-0). The Legislature, however, required Enterprise Services to establish the fining process by rule.

This proposal changes Chapter 200-305 WAC

Reasons supporting proposal: This proposal is necessary to implement the rule making requirements of RCW 39.26.200 (2015) [Chap 44, Laws of 2015 as amended by SHB 1447. SHB 1447 allows DES to debar or impose civil fines. Civil fines must use debarment process.

Statutory authority for adoption: RCW 43.19.011 Director – Powers and duties

Statute being implemented: RCW 39.26.200 (2015) [Chap 44, Laws of 2015 as amended by SHB 1447

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" 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: no comments or recommendations

Name of proponent: (person or organization) Department of Enterprise Services

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Greg Tolbert	1500 Jefferson, Olympia WA	360-407-9038
Implementation:	Greg Tolbert	1500 Jefferson, Olympia WA	360-407-9038
Enforcement:	Farrell Presnell	1500 Jefferson, Olympia WA	360-407-8820

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 Department of Enterprise Services (DES) is not an agency listed in RCW 34.05.328(5)(a)(i). Further, DES does not voluntarily make section 201 applicable to this rule adoption nor to date, has the Joint Administrative Rules Review Committee made section 201 applicable to this rule adoption

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:

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

Explanation of exemptions, if necessary:

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: February 18, 2018

Name: Jack Zeigler

Title: Policy and Rules Manager

Signature:

