



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: December 18, 2024
TIME: 11:31 AM

WSR 25-01-166

Agency: Employment Security Department

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 24-08-028 ; 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)

Adding:

WAC 192-900-040 Out-of-state participant.

WAC 192-900-045 Qualified individual.

WAC 192-900-050 Year.

Chapter 192-940 WAC Qualified individuals

WAC 192-940-005 Earning years to become a qualified individual.

WAC 192-940-010 How will the department determine if someone is a qualified individual?

Amending:

WAC 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 22, 2025	9:00 a.m.	Microsoft TEAMS Join online: link available at paidleave.wa.gov/rulemaking Join by phone: 564-999-2000 PIN: 309 494 035#	Hearing will be held remotely

Date of intended adoption: On or after January 29, 2025 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Janette Benham

Address: Employment Security Department, PO Box 9046

Olympia, WA 98507-9046

Email: rules@esd.wa.gov

Fax:

Other:

By (date) January 22, 2025

Assistance for persons with disabilities:

Contact Teresa Eckstein, State EO Officer

Phone: 360-480-5708

Fax:

TTY:

Email: teckstein@esd.wa.gov

Other:

By (date) January 15, 2025

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Employment Security Department (department) is proposing new rules and amendments regarding the Long-Term Services and Supports Trust Program (WA Cares Fund) to implement a portion of Substitute House Bill 2467, which passed into law during the 2024 legislative session. The proposed rules implement a portion of the bill that was codified in RCW 50B.04.180 by defining "out-of-state participant." The proposed rules also add additional program definitions, outline qualified individual requirements and determinations, and further align the WA Cares Fund and Paid Family and Medical Leave (PFML) appeals processes.

Reasons supporting proposal: The proposed new rules add definitions to clarify program operations, clarify how individuals qualify for program coverage, and outline how the department will make determinations regarding qualified individuals. The

amended rule ensures the WA Cares Fund appeals procedures are aligned with those in place for PFML, as required under RCW 50B.04.120.

Statutory authority for adoption: 50B.04.020

Statute being implemented: RCW 50B.04.050; RCW 50B.04.120; RCW 50B.04.180

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:

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) Employment Security Department, Leave and Care Division

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	April Amundson	Olympia, WA	360-485-2816
Implementation:	April Amundson	Olympia, WA	360-485-2816
Enforcement:	April Amundson	Olympia, WA	360-485-2816

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: WAC 192-900-040 Out-of-state-participant. This rule is exempt under RCW 34.05.328(5)(c)(ii) because it is an interpretive rule that sets forth the agency's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328(5)(c)(iii).

WAC 192-900-045 Qualified individual. This rule is exempt under RCW 34.05.328(5)(c)(ii) because it is an interpretive rule that sets forth the agency's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328(5)(c)(iii). Portions of the rule are also exempt under RCW 34.05.328(5)(b)(5) because the content is explicitly and specifically dictated by RCW 50B.04.050.

WAC 192-900-050 Year. This rule is exempt under RCW 34.05.328(5)(c)(ii) because it is an interpretive rule that sets forth the agency's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328(5)(c)(iii).

WAC 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply. This rule is exempt under RCW 34.05.328(5)(c)(i)(A) and (5)(c)(i)(C) because it is a procedural rule that adopts policies related to internal operations of the department and defines requirements related to agency hearings. Procedural rules are not significant legislative rules under RCW 34.05.328(5)(c)(iii). The rule is also exempt under RCW 34.05.328(5)(b)(v) because the

content is explicitly and specifically dictated by RCW 50B.04.120 requiring the department to align appeal standards and procedures between programs

WAC 192-940-005 Earning years to become a qualified individual. This rule is exempt under RCW 34.05.328(5)(c)(ii) because it is an interpretive rule that sets forth the agency's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328(5)(c)(iii).

WAC 192-940-010 How will the department determine if someone is a qualified individual? This rule is exempt under RCW 34.05.328(5)(c)(ii) because it is an interpretive rule that sets forth the agency's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328(5)(c)(iii). Portions of the rule are also exempt under RCW 34.05.328(5)(b)(v) because the content is explicitly and specifically dictated by RCW 50B.04.050.

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 checked="" 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 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](#)):

	Proposed WAC Sections and Title	This proposed rule section is exempt. Provide RCW to support this exemption.
1.	WAC 192-900-040 Out-of-state participant	RCW 34.05.310(4)(b) – The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals choosing to participate in the program.
2.	WAC 192-900-045 Qualified individual.	RCW 34.05.310(4)(b) – The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 34.05.310(4)(e) – Portions of the rule are dictated by RCW 50B.04.050. RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals applying for program benefits.

3.	WAC 192-900-050 Year	RCW 34.05.310(4)(b) – The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals applying for program benefits.
4.	WAC 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply.	RCW 34.05.310(4)(g) – The rule outlines a procedure, practice, or requirement relating to agency hearings. RCW 34.05.310(4)(e) – The rule is dictated by RCW 50B.04.120 regarding alignment of appeals processes.
5.	WAC 192-940-005 Earning years to become a qualified individual.	RCW 34.05.310(4)(b) – The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals applying for program benefits.
6.	WAC 192-940-010 How will the department determine if someone is a qualified individual?	RCW 34.05.310(4)(b) – The rule relates to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(4) – The rule does not affect businesses and pertains only to individuals applying for program benefits. RCW 34.05.310(4)(e) – Portions of the rule are dictated by RCW 50B.04.050.

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.
- 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: December 18, 2024

Name: April Amundson

Title: Policy and Rules Manager, ESPI, Leave and Care Programs

Signature:

