



# 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: September 16, 2022

TIME: 10:13 AM

WSR 22-19-059

Agency: Employment Security Department

Original Notice

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

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

Preproposal Statement of Inquiry was filed as WSR 22-16-008 ; 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)

WAC 192-04-145 Brief adjudicative proceedings.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
October 27, 2022	9:00 am	Microsoft Teams Meeting ID: 285 578 340 328 Passcode: EcuvLs Call in: (564) 999-2000 Call in ID: 876 109 274#	Join Teams meeting: <a href="https://teams.microsoft.com/l/meetup-join/19%3ameeting_NTcyZTc4Y2YtYmU3MC00MjkzLWFhMmItZDYyNTZmZDgyMjVI%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22f5b90483-feb0-49a0-8e23-8b3e55021c0b%22%7d">https://teams.microsoft.com/l/meetup-join/19%3ameeting_NTcyZTc4Y2YtYmU3MC00MjkzLWFhMmItZDYyNTZmZDgyMjVI%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22f5b90483-feb0-49a0-8e23-8b3e55021c0b%22%7d</a>

Date of intended adoption: October 31, 2022 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Josh Dye  
Address: P.O. Box 9046, Olympia, WA 98507-9046  
Email: rules@esd.wa.gov  
Fax: 844-652-7096  
Other:  
By (date) October 13, 2022

Assistance for persons with disabilities:

Contact Teresa Eckstein  
Phone: 360-507-9890  
Fax: 360-586-4600  
TTY: Relay 711  
Email: teresa.eckstein@esd.wa.gov  
Other:  
By (date) October 6, 2022

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The new proceedings create an accelerated path for claims to be adjudicated that will allow the Office of Administrative Hearings to resolve a larger number of cases.

Reasons supporting proposal:

Due to unprecedented unemployment insurance claims during the COVID-19 pandemic, the Department and the Office of Administrative Hearings have a backlog of 40,947 pending appeals as of December 31, 2021. For comparison, there were 27,127 pending appeals at the end of 2020, and 2,470 at the end of 2019. This backlog has led to an average wait time of 167.3 days for appeals closed during December of 2021, compared to an average wait time of 31.58 days during December of 2019. The United States Department of Labor's performance metric calls for 60% of appeals to be resolved within 30 days and 80% of appeals to be resolved within 45 days. In December 2019, the Department closed 71% of cases within 30 days and 94% of cases within 45 days. In December 2021, only 2% of appeals were resolved within 30 days and 4% of appeals within 45 days.

Currently, the Department is referring between 400 and 500 cases per day (2,000 to 2,500 per week) to the Office of Administrative Hearings. This trend is expected to continue through the end of the year with continued unemployment

insurance claims processing associated with federal pandemic programs, such as the Mixed Earner Unemployment Compensation program.

Using the brief adjudicative proceedings authorized by emergency rule filed in WSR 22-08-045, administrative law judges were able to process between 60 and 75 proceedings each week, up from 24 per week for full hearings. From May 16, 2022, through June 24, 2022, the Office of Administrative Hearings processed 1,656 claims.

**Statutory authority for adoption:**

**Statute being implemented:**

**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**

**Type of proponent:**  Private  Public  Governmental

**Name of proponent:** (person or organization) Employment Security Department, Office of Administrative Hearings

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Josh Dye	Olympia	360-890-3472
Implementation:	Brendon Tukey	Spokane Valley	509-867-7948
Enforcement:	Brendon Tukey	Spokane Valley	509-867-7948

**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: This is a procedural rule as defined in RCW 34.05.328(5)(c)(i)(A) and not a significant legislative rule.

**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.

Brief Adjudicative Proceedings do not expand benefit eligibility. The new proceedings create an accelerated path for claims to be adjudicated. As such, there are no impacts on employers.

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 16, 2022

**Name:** Dan Zeitlin

**Title:** Employment System Policy Director

**Signature:**

