



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: October 12, 2023

TIME: 2:00 PM

WSR 23-21-062

Agency: Employment Security Department

Original Notice

Supplemental Notice to WSR

Continuance of WSR

Preproposal Statement of Inquiry was filed as WSR 23-14-051; 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: Expanding Overpayment Waivers: WAC 192-220-017 (Am I required to pay the overpayment?), WAC 192-220-018 (Blanket overpayment waivers for federally funded pandemic era benefits); WAC 192-220-080 (How do I obtain a waiver?)

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 21, 2023	9:00 AM	Zoom Meeting ID: 811 7064 7138 Passcode: 849377 Call in: +12532050468,,81170647138#,,, ,*849377# US +12532158782,,81170647138#,,, ,*849377# US (Tacoma)	Join Zoom meeting: https://esd-wa-gov.zoom.us/j/81170647138?pwd=aWluV2kvK3BSbERZMmd2bkhTL21tQT09

Date of intended adoption: November 22, 2023 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Stephanie Frazee
Address: P.O. Box 9046, Olympia, WA 98507-9046
Email: rules@esd.wa.gov
Fax: 844-652-7096
Other:
By (date) November 21, 2023

Assistance for persons with disabilities:

Contact: Teresa Eckstein
Phone: 360-507-9890
Fax: 360-507-9890
TTY: Relay 711
Email: Teresa.eckstein@esd.wa.ov
Other:
By (date) November 14, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This rulemaking will permanently adopt the Department's overpayment waiver emergency rules in order to ensure the Overpayment Waiver project can be completed. This rulemaking will also allow the Department to consider waivers for claimants with overpayments resulting from a discharge for misconduct that occurred from February 2, 2020, through September 4, 2021.

Reasons supporting proposal: The Department's current overpayment waiver emergency rules must be adopted as permanent rules so that all applications can be processed under those rules. Additionally, in order to expand the availability of overpayment waivers to individuals impacted by the pandemic, the eligibility for waiver of overpayment should be extended to claimants who have an overpayment because they were discharged for misconduct during the pandemic period.

Statutory authority for adoption: RCW 50.20.190, RCW 50.24.020, RCW 50.12.010 and RCW 50.12.040.

Statute being implemented: RCW 50.20.190.

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: Employment Security Department

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting: Stephanie Frazee	Olympia, WA	425-465-0313
Implementation: J.R. Richards	Olympia, WA	360-463-1079
Enforcement: J.R. Richards	Olympia, WA	360-463-1079

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: Stephanie Frazee
Address: P.O. Box 9046, Olympia, WA 98507-9046
Phone: 425-465-0313
Fax: 844-652-7096
TTY: Relay 771
Email: rules@esd.wa.gov
Other: <https://esd.wa.gov/newsroom/rulemaking/overpayment-waivers-permanent-rulemaking>

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:
- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input 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 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](#)):
- 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 The rulemaking does not impose any additional requirements or costs on small businesses.
- 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 11, 2023

Name: Joy Adams

Title: Acting Director, Employment System Policy & Integrity

Signature:

