



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Employment Security Department

- ☐ Preproposal Statement of Inquiry was filed as WSR _____; or
☒ Expedited Rule Making--Proposed notice was filed as WSR 16-07-013; or
☐ Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- ☐ Original Notice
☐ Supplemental Notice to WSR _____
☐ Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) Adoption of a new rule in Chapter 192-04, Practice and Procedure for appeals related to unemployment benefits and taxes. The new rule allows the option for the Commissioner's Review Office (CRO) to hold evidentiary hearings on whether a Petition for Review (PFR) was filed late with good cause.

Hearing location(s):

Employment Security Department
 Maple Leaf Conference Room, 2nd Floor
 212 Maple Park Ave.
 Olympia, WA

Date: August 23, 2016 Time: 9:00 a.m.

Submit written comments to:

Name: Juanita Myers
 Address: Employment Security Department
 PO Box 9046, Olympia WA 98507
 e-mail jmyers@esd.wa.gov
 fax (360) 902-9605 by (date) August 22, 2016

Assistance for persons with disabilities: Contact

Teresa Eckstein, State EO Officer by August 22, 2016

TTY 711 or (360) 902-9354

Date of intended adoption: August 26, 2016

(Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Currently, when a PFR is filed late, the CRO remands the matter to the Office of Administrative Hearings (OAH) to conduct a short evidentiary hearing as to why the PFR was late. OAH does not take jurisdiction and does not determine whether the untimely filing was for good cause. OAH gathers the facts as to why the PFR was late and returns the hearing record to the CRO to determine good cause.

The proposed rule will eliminate the need for the CRO to remand the issue of good cause for the untimely filed PFR to OAH for an evidentiary hearing. Since the purpose of the evidentiary hearing is solely to gather the facts regarding why the petition was late, the CRO would have the ability to conduct the hearing. The determination of whether the petitioner had good cause for filing late is not changed; it remains with the CRO.

Reasons supporting proposal: The current process requiring remand to OAH creates a significant delay in the review process. It takes OAH an average of 50 days to conduct the evidentiary hearing and return the hearing record to the CRO. The average time frame for the CRO to complete the review process is 15 days. Petitioners will receive their decisions much more quickly and, if unemployment benefits are allowed, the hardship on the individual due to today's extensive turnaround time will be alleviated. In addition, PFRs that the CRO ordinarily dismisses could get a short evidentiary hearing, providing better access to justice for petitioners.

Statutory authority for adoption: RCW 50.12.010 and 50.12.040

Statute being implemented: RCW 50.32.075 and 50.32.080

Is rule necessary because of a:

- Federal Law? ☐ Yes ☒ No
 Federal Court Decision? ☐ Yes ☒ No
 State Court Decision? ☐ Yes ☒ No
 If yes, CITATION:

DATE

NAME (type or print)

Lisa Marsh

SIGNATURE

Lisa Marsh

TITLE Deputy Commissioner

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: July 19, 2016

TIME: 11:39 AM

WSR 16-15-080

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Employment Security Department

- ☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Don Westfall	Olympia	(360) 570-6960
Implementation....Don Westfall	Olympia	(360) 570-6960
Enforcement..... Don Westfall	Olympia	(360) 570-6960

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

☐ Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No. Explain why no statement was prepared. There is no impact to business, other than providing individuals appealing a decision of OAH a more efficient process.

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 () _____

e-mail _____

☒ No: Please explain: The change is budget neutral for the department, and imposes no costs on the regulated community.