



# PROPOSED RULE MAKING

## CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Employment Security Department

- Preproposal Statement of Inquiry was filed as WSR 10-07-144 ; or
- Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR \_\_\_\_\_
- Continuance of WSR \_\_\_\_\_

Title of rule and other identifying information: (Describe Subject) Chapter 192-04, Practice and Procedure. The rules relate to the Commissioner's review of decisions issued by the Office of Administrative Hearings.

**Hearing location(s):**  
 Employment Security Department  
 Maple Leaf Conference Room, 2<sup>nd</sup> Floor  
 212 Maple Park Drive  
 Olympia, Washington

Date: September 23, 2010 Time: 11:00 a.m.

**Submit written comments to:**

Name: Pamela Ames  
 Address: PO Box 9046  
 Olympia, WA 98507-9046  
 e-mail pames@esd.wa.gov  
 fax (360)902-9799 by (date) 9/22/10

**Assistance for persons with disabilities:** Contact

Tammy Crawford by 9/21/10  
 TTY (360) 9-02-9569 or (360) 902-9577

**Date of intended adoption:** September 27, 2010  
 (Note: This is NOT the effective date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The amendment to WAC 192-04-175 establishes the circumstances under which an individual designated by the Commissioner may, as an interested party, direct the Commissioner's review office to take a decision issued by the office of administrative hearings under advisement. Other changes to rules are made for purposes of clarity and ease of administration.

**Reasons supporting proposal:** The amendment to WAC 192-04-175 formalizes existing agency policy. Other changes are made for purposes of clarity and ease of administration.

**Statutory authority for adoption:** RCW 50.12.010 and RCW 50.12.040

**Statute being implemented:** RCW 50.32.070 and RCW 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:

**CODE REVISER USE ONLY**

CODE REVISER'S OFFICE  
 STATE OF WASHINGTON  
 FILED

AUG 18 2010

TIME 9:38  AM  PM

WSR 10-17-118

DATE 8-17-10

NAME (type or print) Karen Lee

SIGNATURE [Signature]

TITLE Commissioner

(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..... Juanita Myers	212 Maple Park, Olympia WA	(360) 902-665
Implementation.... Nan Thomas	212 Maple Park, Olympia WA	(360) 902-9303
Enforcement..... Nan Thomas	212 Maple Park, Olympia WA	(360) 902-9303

**Has a small business economic impact statement been prepared under chapter 19.85 RCW?**

Yes. Attach copy of small business economic 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.

The rules concern procedures related to the filing of petitions for review by the Commissioner of decisions issued by the Office of Administrative Hearings. Any impact on business is minimal and would not disproportionately impact small business.

**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 rules formalize existing agency policy regarding the filing of petitions for review and make other changes for purposes of clarity and ease of administration. No substantive policy changes are included in the proposed rules.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-04-040 Interested parties.** In all cases adjudicated under Title 50 RCW the employment security department is an interested party. (~~Other interested parties are:~~)

(1) Other interested parties in benefit appeals(~~(-)~~) are:

(a) The claimant;

(b) Any employer entitled to notice under WAC 192-130-060(~~(-)~~); and

(c) An interested employer as defined in WAC (~~(192-28-125,)~~) 192-220-060 in cases involving the (~~(payment or)~~) recovery of benefits(~~(, including but not limited to the entitlement to, eligibility for or qualification for waiting period credit or benefits)~~).

(2) Other interested parties in tax appeals(~~(-)~~) are employers whose contributions, experience rating, benefit charges, or rate of contribution are affected by:

(a) An assessment for contributions;

(b) A denial of a claim for refund of contributions, interest, penalties;

(c) A denial of a request for relief of benefit charges made to their account; or

(d) Their determined or redetermined rate of contribution.

AMENDATORY SECTION (Amending WSR 99-15-069, filed 7/19/99, effective 8/19/99)

**WAC 192-04-060 Appeals--Petitions for hearing--Petitions for review--Time limitation(~~(--Forms)~~).** (1) **Appeals and petitions for hearing.** Any interested party who is aggrieved by any decision of the department set forth in WAC 192-04-050 or for which the department has provided notice of appeal or petition for hearing rights may file a written appeal or petition for hearing by mailing it or sending it (~~(via electronic telefacsimile)~~) by fax to the (~~(unemployment claims telecenter)~~) address or fax number indicated on the determination notice or (~~(order and notice of assessment)~~) other appealable document.

The appeal or petition for hearing (~~(shall)~~) must be filed within thirty days of the date the decision is delivered or mailed, whichever is the earlier. The appeal and/or petition for hearing shall be filed in accordance with the provisions of RCW 50.32.025.

(2) **Petitions for review.** Any interested party other than the

department who is aggrieved by a decision of the office of administrative hearings, other than an order approving a withdrawal of appeal, an order approving a withdrawal of a petition for hearing, a consent order, or an interim order, may file a written petition for review in accordance with the provisions of WAC 192-04-170. The petition for review (~~(shall)~~) must be filed within thirty days of the date of delivery or mailing of the decision of the office of administrative hearings, whichever is the earlier. The petition for review shall be filed in accordance with the provisions of RCW 50.32.025.

~~((3) **Forms.** At the request of an interested, aggrieved party, the employment security department shall furnish forms for the filing of a notice of appeal, petition for hearing, or petition for review, but the use of such forms is not a jurisdictional requirement.))~~

AMENDATORY SECTION (Amending WSR 95-18-055, filed 8/31/95, effective 10/1/95)

**WAC 192-04-063 Aggrieved party.** An aggrieved party is:

(1) A claimant or an employer who receives an adverse decision of the department set forth in WAC 192-04-050 or for which the department has provided notice of appeal or petition for review rights; or

(2) The department, a claimant, or an employer who receives an adverse decision of the office of administrative hearings.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

**WAC 192-04-170 Decision of commissioner--Petition for review--Filing--Reply.** (1) The written petition for review shall be filed by mailing it to the Agency Records Center, Employment Security Department, Post Office Box (~~(9046)~~) 9555, Olympia, WA (~~(98507-9046)~~) 98507-9555, within thirty days of the date of mailing or delivery of the decision of the office of administrative hearings, whichever is the earlier.

(2) Any written argument in support of the petition for review must be attached to the petition for review and be filed (~~(contemporaneously therewith)~~) at the same time. The commissioner's review office will acknowledge receipt of the petition for review by assigning a review number to the case, entering the review number on the face of the petition for review, and setting forth the (~~(acknowledgement)~~) acknowledgment date on

the petition for review. The commissioner's review office will also mail copies of the acknowledged petition for review and attached argument in support thereof to the petitioning party, nonpetitioning party and their representatives of record, if any.

(3) Any reply to the petition for review and any argument in support thereof by the nonpetitioning party shall be mailed to the Commissioner's Review Office, Employment Security Department, Post Office Box ((9046)) 9555, Olympia, WA ((98504-9046)) 98504-9555. The reply must be received by the commissioner's review office within fifteen days of the date of mailing of the acknowledged petition for review. An informational copy shall be mailed by the nonpetitioning party to all other parties of record and their representatives, if any.

(4) The petition for review and argument in support thereof and the reply to the petition for review and argument in support thereof shall:

(a) Be captioned as such, set forth the docket number of the decision of the office of administrative hearings, and be signed by the party submitting it or by his or her representative.

(b) Be legible, reproducible and five pages or less.

(5) Arrangements for representation and requests for copies of the hearing record and exhibits will not extend the period for the filing of a petition for review, argument in support thereof, or a reply to the petition for review.

(6) Any argument in support of the petition for review or in reply thereto not submitted in accordance with the provisions of this regulation shall not be considered in the disposition of the case absent a showing that failure to comply with these provisions was beyond the reasonable control of the individual seeking relief.

AMENDATORY SECTION (Amending WSR 95-18-055, filed 8/31/95, effective 10/1/95)

**WAC 192-04-175 Advisement order.** ((On behalf of the commissioner,)) (1) The commissioner's review office may prevent finality of any decision of the office of administrative hearings and take jurisdiction of the proceedings for review thereof by issuing an advisement order ((so providing)).

(2) (a) The commissioner may designate one or more individuals employed by the department to request an advisement order on decisions that the individual identifies as:

(i) Cases of first impression;

(ii) Cases that may impact significant numbers of other similarly situated cases;

(iii) Cases that involve United States Department of Labor conformity or compliance issues; or

(iv) Cases in which the interpretation of the law is clearly erroneous.

(b) Upon receipt of the request of the designated individual, the commissioner's review office shall determine if the request meets the criteria outlined in this subsection and shall notify the requestor in writing if the decision will not be taken under advisement and the reasons why.

(3) When the commissioner's review office determines subject matter review of any decision of the office of administrative hearings is warranted, it shall issue an advisement order which accepts review and ((mailing)) mail a copy of the advisement order to the parties of record and their representatives within the same period allowed for the filing of a petition for review.

(4) The parties of record will be given fifteen days to submit argument in support of or in opposition to the decision of the office of administrative hearings ((, as well as in response to any departmental memorandum suggesting to the commissioner's review office that it consider taking a decision of the office of administrative hearings under advisement)). That argument ((and/or response)) from the parties of record must be hand delivered or mailed to the commissioner's review office and received by that office within fifteen days from the date of mailing of the order taking the decision of the office of administrative hearings under advisement.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

**WAC 192-04-190 Petition for reconsideration--Filing--Consideration--Disposition--Judicial review.** (1) A written petition for reconsideration and argument in support thereof may be filed within ten days of the date of mailing or delivery of the decision of the commissioner, whichever is the earlier. It shall be mailed to the Commissioner's Review Office, Employment Security Department, Post Office Box ((9046)) 9555, Olympia, WA ((98507-9046)) 98507-9555, and to all other parties of record and their representatives.

(2) No matter will be reconsidered by the commissioner unless it clearly appears from the face of the petition for reconsideration and the argument submitted in support thereof that (a) there is obvious material, clerical error in the decision or (b) the petitioner, through no fault of his or her own, has been denied a reasonable opportunity to present argument or respond to argument pursuant to WAC 192-04-170.

(3) A petition for reconsideration shall be deemed to have been denied if, within twenty days from the date the petition for reconsideration is filed, the commissioner does not either (a) dispose of the petition for reconsideration or (b) mail or deliver to the parties a written notice specifying the date by which he or she will act on the petition for reconsideration. If no action is

taken by the date specified in such written notice, the petition will be deemed to have been denied.

(4) A petition for reconsideration does not stay the effectiveness of the decision of the commissioner. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review. An order denying reconsideration or a written notice specifying the date upon which action will be taken on the petition for reconsideration is not subject to judicial review.