



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: August 03, 2022

TIME: 8:10 AM

WSR 22-16-111

Agency: Employment Security Department

Original Notice

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

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

Preproposal Statement of Inquiry was filed as WSR 21-22-107 and 22-08-039 ; 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)

Long-Term Services and Supports Trust Program (WA Cares)

Amending:

WAC 192-905-005 Eligibility requirements for an employee to receive a permanent exemption from the long-term services and supports trust program.

WAC 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program?

WAC 192-910-015 What are the employer's responsibilities for premium deductions?

WAC 192-915-005 Election of coverage for self-employed persons.

WA C 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?

Adding:

WAC 192-905-006 Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program.

WAC 192-905-007 Notification requirements and penalties for discontinuing conditional exemptions.

WAC 192-930-005 Audit procedures.

WAC 192-930-010 What happens if an employer fails to provide requested information to the department for an audit?

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
September 6, 2022	9:00 AM	Microsoft TEAMS  Join online: link available at <a href="https://esd.wa.gov/newsroom/rulemaking/ltss">esd.wa.gov/newsroom/rulemaking/ltss</a> Join by phone: (564) 999-2000 PIN: 810 809 213#	Hearing will be held remotely due to COVID-19.

Date of intended adoption: On or after September 13, 2022 (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](mailto:rules@esd.wa.gov)

Fax:

Other:

By (date) September 6, 2022

Assistance for persons with disabilities:

Contact Teresa Eckstein, State EO Officer

Phone: 360-480-5708

Fax:

TTY: 711

Email: Teckstein@esd.wa.gov

Other:

By (date) August 30, 2022

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The proposed new and amended rules implement portions of Substitute House Bill (SHB) 1732, Engrossed Substitute House Bill (ESHB) 1733, and the third phase of the Employment Security Department's (department) initial program implementation. SHB 1732 delayed the WA Cares program by 18 months and created a partial benefit for near retirees. ESHB 1733 added four new voluntary exemptions to include veterans who have service-connected disability ratings of 70 percent or greater, spouses or registered domestic partners of active-duty United States armed forces service members, individuals who hold temporary worker visas, and individuals who maintain permanent residence outside of Washington. ESHB 1733 also outlines circumstances under which three of the new voluntary exemptions must be discontinued. Proposed new rules also address employer audit procedures.

**Reasons supporting proposal:** The proposed rules are necessary to implement portions of the WA Cares program related to changes made when SHB 1732 and ESHB 1733 passed and to complete the third phase of the department's initial program implementation. The proposed rules provide guidance to employees, employers, self-employed individuals, and the general public regarding the delay of the program, criteria and applications procedures for new voluntary exemptions, and employer audit procedures.

**Statutory authority for adoption:** RCW 50B.04.020, RCW 50B.04.055, RCW 50B.04.080, RCW 50B.04.085, RCW 50B.04.090

**Statute being implemented:** RCW 50B.04.020, RCW 50B.04.055, RCW 50B.04.080, RCW 50B.04.085, RCW 50B.04.090

**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:**

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

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	April Amundson	Lacey, WA	360-485-2816
Implementation:	April Amundson	Lacey, WA	360-485-2816
Enforcement:	April Amundson	Lacey, 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: rules@esd.wa.gov  
Other:

No: Please explain:

The following rules are exempt under RCW 34.05.328 (5)(b)(v) and (5)(c)(i)(C):

WAC 192-905-005 Eligibility requirements for an employee to receive a permanent exemption from the long-term services and supports trust program.

WAC 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program?

The rules are explicitly and specifically dictated by RCW 50B.04.055 and RCW 50B.04.085 and are procedural rules that adopt a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

The following rules are exempt under RCW 34.05.328 (5)(b)(v) and (5)(c)(i)(C):

WAC 192-905-006 Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program.

WAC 192-905-007 Notification requirements and penalties for discontinuing conditional exemptions.

The rules are explicitly and specifically dictated by RCW 50B.04.055 and are procedural rules that adopt a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

The following rule is exempt under RCW 34.05.328 (5)(b)(v) and (5)(c)(i)(C):

WAC 192-910-015 What are the employer's responsibilities for premium deductions?

The rule is explicitly and specifically dictated by RCW 50B.04.080 and is a procedural rule that adopts a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

The following rules are exempt under RCW 34.05.328 (5)(b)(v) and (5)(c)(i)(C):

WAC 192-915-005 Election of coverage for self-employed persons.

WAC 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?

The rules are explicitly and specifically dictated by RCW 50B.04.090 and are procedural rules that adopt a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

The following rules are exempt under RCW 34.05.328 (5)(b)(v) and (5)(c)(i)(C):

WAC 192-930-005 Audit procedures.

WAC 192-930-010 What happens if an employer fails to provide requested information to the department for an audit?

The rules are explicitly and specifically dictated by RCW 50B.04.020 (4)(c). The rules ensure that standards and procedures for employer audits are coordinated with the same activities conducted under Title 50A RCW. The rules are also procedural rules that adopt a policy pertaining to the internal operations of the department. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). 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 \_\_\_\_\_.

Explanation of exemptions, if necessary:

The following rules are exempt under RCW 34.05.310 (4)(b) and (4)(e) because the rules relate to internal operations of the department and are dictated by statute (RCW 50B.04.055 and RCW 50B.04.085):

WAC 192-905-005 Eligibility requirements for an employee to receive a permanent exemption from the long-term services and supports trust program.

WAC 192-905-010 How and when can an employee apply for an exemption from the long-term services and supports trust program?

The following rules are exempt under RCW 34.05.310 (4)(b) and (4)(e) because the rules relate to internal operations of the department and are dictated by statute (RCW 50B.04.055):

WAC 192-905-006 Eligibility requirements for an employee to receive a conditional exemption from the long-term services and supports trust program.

WAC 192-905-007 Notification requirements and penalties for discontinuing conditional exemptions.

The following rule is exempt under RCW 34.05.310 (4)(b) and (4)(e) because the rule relates to internal operations of the department and is dictated by statute (RCW 50B.04.080):

WAC 192-910-015 What are the employer's responsibilities for premium deductions?

The following rules are exempt under RCW 34.05.310 (4)(b) and (4)(e) because the rules relate to internal operations of the department and are dictated by statute (RCW 50B.04.090):

WAC 192-915-005 Election of coverage for self-employed persons.

WAC 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?

The following rule is exempt under RCW 34.05.310 (4)(b) and (4)(e) because the rule relates to internal operations of the department and is dictated by statute (50B.04.020 (4)(c)):

WAC 192-930-005 Audit procedures.

WAC 192-930-010 What happens if an employer fails to provide requested information to the department for an audit?

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**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If 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 analysis showing how costs were calculated.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert 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:** August 3, 2022

**Name:** April Amundson

**Title:** Policy and Rules Manager, Leave and Care Division

**Signature:**

