



# PROPOSED RULE MAKING

## CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: January 19, 2024  
TIME: 5:20 PM

WSR 24-03-124

**Agency:** Department of Social and Health Services, Office of the Secretary, BOA

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

- Preproposal Statement of Inquiry was filed as WSR 23-24-017 ; 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 388-02-0020, What does good cause mean? and 388-02-0085, Do you have a right to a hearing?

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
February 27, 2024	10:00 a.m.	Virtual via Teams or Call in	Hearings are held virtually, see the DSHS website <a href="https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings">https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings</a> for the most current information

**Date of intended adoption:** No earlier than February 28, 2024 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: DSHS Rules Coordinator  
 Address: PO Box 45850, Olympia, WA 98504  
 Email: [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
 Fax: 360-664-6185  
 Other:  
 By (date) 5:00 p.m. on February 27, 2024

**Assistance for persons with disabilities:**

Contact Shelley Tencza, Rules Consultant  
 Phone: 360-664-6036  
 Fax: 360-664-6185  
 TTY: 711 Relay  
 Email: [Tencza@dshs.wa.gov](mailto:Tencza@dshs.wa.gov)  
 Other:  
 By (date) 5:00 p.m. on February 13, 2024

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** Provide statutory definition of "good cause" for late-filed hearing requests in public assistance cases.

**Reasons supporting proposal:** New state statute, effective July 1, 2023.

**Statutory authority for adoption:** RCW 34.05.220, 34.05.220(4) 43.17.060, 43.20A.075, and 74.08.080(2)

**Statute being implemented:** RCW 74.08.080(2).

**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:** The proposed rule amendments define "good cause" for late-filed hearing requests in public assistance cases, based on recent statutory changes to RCW 74.08.080(2).

**Type of proponent:**  Private  Public  Governmental

**Name of proponent:** (person or organization) DSHS Board of Appeals, Office of the Secretary.

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Marc Lampson	1115 Washington St SE, Olympia WA 98504	360-664-6093

Implementation: Marc Lampson 1115 Washington St SE, Olympia WA 98504 360-664-6093

Enforcement: Marc Lampson 1115 Washington St SE, Olympia WA 98504 360-664-6093

**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: The proposed rule amendments define "good cause" for late-filed hearing requests in public assistance cases, based on recent statutory changes, with no costs anticipated to anyone. These rules are exempt as allowed under RCW 34.05.328(5)(b)(vii) which states in part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

### 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"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations)         | <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)   |
| <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)  | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language) | <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>((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: The proposed rule amendments define "good cause" for late-filed hearing requests in public assistance cases, based on recent statutory changes to RCW 74.08.080(2). These amendments do not impact small businesses. They only impact DSHS public assistance clients and applicants.

**(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. \_\_\_\_\_
- 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:

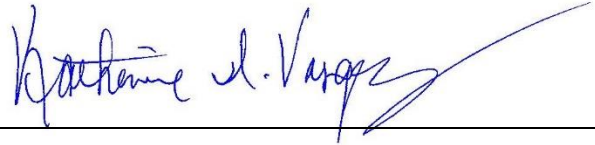
Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Date:** January 19, 2024

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0020 What does good cause mean?** (1) Good cause is a substantial reason or legal justification for failing to appear, to act, or respond to an action. To show good cause, the ALJ must find that a party had a good reason for what they did or did not do, using the provisions of Superior Court Civil Rule 60 as a guideline.

(2) Good cause may include, but is not limited to, the following examples.

(a) You ignored a notice because you were in the hospital or were otherwise prevented from responding; or

(b) You could not respond to the notice because it was written in a language that you did not understand.

(3) For purposes of public assistance cases, good cause has the same meaning as described in RCW 74.08.080. Good cause for not requesting a hearing before the deadline may include, but is not limited to: Military deployment, medical reasons, housing instability, language barriers, or domestic violence.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0085 Do you have a right to a hearing?** (1) You have a right to a hearing only if a law or DSHS rule gives you that right. If you are not sure, you should request a hearing to protect your right.

(2) Some DSHS programs may require you to go through an informal administrative process before you can request or have a hearing. The notice of DSHS action sent to you should include information about this requirement if it applies.

(3) You have a limited time to request a hearing. The deadline for your request varies by the DSHS program involved. You should submit your request right away to protect your right to a hearing, even if you are also trying to resolve your dispute informally. For public assistance cases, if an applicant or recipient does not file a request for a hearing within 90 calendar days after receiving notice of an aggrieving decision, the request may still be filed within one year of the aggrieving decision upon a showing of good cause. For purposes of public assistance cases, as defined in RCW 74.08.080, good cause for not requesting a hearing before the deadline may include, but is not limited to: military deployment, medical reasons, housing instability, language barriers, or domestic violence.

(4) If you request a hearing, one is scheduled.

(5) If DSHS or the ALJ questions your right to a hearing, the ALJ decides whether you have that right.

(6) If the ALJ decides you do not have a right to a hearing, your request is dismissed.

(7) If the ALJ decides you do have a right to a hearing, the hearing proceeds.