



EXPEDITED RULE MAKING

CR-105 (August 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: August 22, 2017

TIME: 10:11 AM

WSR 17-17-133

Agency: Department of Labor and Industries

Title of rule and other identifying information: (describe subject) WAC 296-900-17005 Appealing a Citation and Notice (C&N)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this proposal is to update the appeal extension dates within WAC 296-900-17005 to coincide with 2017's House Bill (HB) 1629 (Chapter 13, Laws of 2017).

When the department issues a citation for a safety and health violation, an employer may appeal the violation and penalties to the Board of Industrial Insurance Appeals (BIIA). An employee or employee representative may appeal the timeline in the citation within which the hazards must be corrected. If appealed, the department has an opportunity to "reassume" jurisdiction to attempt to reach a resolution to the appeal, including a settlement. The department has 30 working days to decide these reassumption appeals. If the parties agree, the 30 day time period may be extended. HB 1629 increased the extension time period from 15 days to an additional 45 days.

Additional updates being made during this rulemaking, not affiliated with HB 1629, are adding the option to file appeals electronically; housekeeping changes, and eRules formatting. These changes do not introduce new requirements or cause any costs to employers.

Changes being proposed in this rulemaking to be consistent with HB 1629:

- In subsection (6)(b), change the extension time period from 15 working days to up to 45 working days to be consistent with HB 1629.
- In subsection (7), change the language regarding the total reassumption time period to up to 75 working days if all parties agree to the extension of up to 45 working days.

Other changes being proposed in this rulemaking include:

- In subsections (2) and (4), add new language to allow for electronic submission via email to: "DOSHappeals@lni.wa.gov."
- Change bullets and dashes to letters and numbers where applicable.
- Move bold "you must" to beginning of sentence in the new numbered subsections (1) and (2) as part of eRules language reformatting.
- Move bolded phrase "Employees or their designated representatives must" to beginning of the new numbered subsections (3) and (4) as part of eRules language reformatting.
- In the definition of "Reassume Jurisdiction," add a period after the defined word and remove "means that" to make the definition a complete sentence.

Reasons supporting proposal: A reason supporting this proposal of adding an electronic option for customers to send in their appeal to a citation and notice to DOSH, is that we are making it easier for our customers to do business with the department.

Statutory authority for adoption: RCW 49.17.010, RCW 49.17.040, RCW 49.17.050, RCW 49.17.060

Statute being implemented: Chapter 49.17 RCW; Chapter 13, Laws of 2017

Is rule necessary because of a:

- Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Name of proponent: (person or organization) Department of Labor and Industries

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Chris Miller	Tumwater, WA	360-902-5516
Implementation:	Anne Soiza	Tumwater, WA	360-902-5090
Enforcement:	Anne Soiza	Tumwater, WA	360-902-5090

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

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
 Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
 Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
 Content is explicitly and specifically dictated by statute;
 Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
 Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
 The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
 The rule is no longer necessary because of changed circumstances; or
 Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): The need for this expedited rulemaking is to meet the January 1, 2018 effective date of the changes that were introduced in House Bill 1629. This fits within the parameters of RCW 34.05.353, Expedited Rulemaking.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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Other:

AND RECEIVED BY (date) October 24, 2017

Date: August 22, 2017

Name: Joel Sacks

Title: Director

Signature:

