PREPROPOSAL STATEMENT OF INQUIRY

Agency: Employment Security Department

Subject of possible rule making: The department proposes to adopt rules governing the recovery of overpaid unemployment benefits. The rules will define "equity and good conscience" as used in RCW 50.20.190 and RCW 50.24.020, specify the requirements individuals must follow when applying for a waiver of the overpayment or when submitting an offer in compromise, and clarify other provisions related to the recovery of benefit overpayments.

Statutes authorizing the agency to adopt rules on this subject: RCW 50.12.010 and RCW 50.12.040.

Reasons why rules on this subject may be needed and what they might accomplish: The term "equity and good conscience" is currently defined in regulation. However, the Division III of the Court of Appeals in a published decision, Delagrace v. ESD, has determined that the department's definition of this phrase is narrower than intended by the statute. The Court held that the department must consider "equity and good conscience" criteria for waiver requests and offers in compromise under the standard of fairness, rather than relying primarily on financial considerations. The Court also authorized the granting of partial waivers, when the department's policy has been to waive all or none of an overpayment. Existing regulations will be amended to conform to the decision of the Court.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:

The U.S. Department of Labor reviews the state's administration of the unemployment insurance program to ensure conformity to federal statutes and regulations. The state has broad flexibility in the implementation of unemployment insurance laws as long as conformity is maintained. The proposed regulations will be shared with USDOL prior to adoption.

Process for developing new rule (check all that apply):
- [x] Negotiated rule making
- [ ] Pilot rule making
- [ ] Agency study
- [x] Other (describe) The department will hold informal meetings with stakeholders to obtain input on the proposed rule-making.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

Persons interested in attending meetings to discuss the proposed rules should contact:
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