

COST-BENEFIT ANALYSIS

In performing a cost-benefit analysis, each rulemaking entity must provide the information requested for the cost-benefit analysis to be considered a good faith effort. The cost-benefit analysis must be submitted to the Office of Policy, Research and Regulatory Reform at least ten (10) days before the administrative hearing on the proposed rule and posted on your agency's web site. For all questions, please attach all underlying data that supports the statements or figures stated in this cost-benefit analysis.

DEPARTMENT: Personnel and Administration

AGENCY: Office of Administrative Courts

CCR: 1 CCR 104-3

DATE: June 22, 2023

RULE TITLE OR SUBJECT: 9.B. 4 AND 5 APPLICATION FOR EXPEDITED HEARING

Per the provisions of 24-4-103(2.5)(a), Colorado Revised Statutes, the cost-benefit analysis must include the following:

1. The reason for the rule or amendment;

The rule is being amended to reflect a statutory change to sections 8-43-404(5)(D) and (E), Colorado Revised Statutes (C.R.S.). The statutory modifications explicitly entitle either party to an expedited hearing under the circumstances described in both subsections 4 and 5 of Rule 9(B) and in the aforementioned statutes. Statutory construction principles, in particular *expressio unius est exclusio alterius*, informs the last sentences of the proposed rules. The statutory provisions expressly include criteria for which an expedited hearing is permitted thereby excluding all other possible issues that might be ripe for determination. The inclusion of clarifying sentences avoids the need for inference by expressly stating that issues apart from those specified by statute will not be addressed during the expedited hearing.

2. The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness;

The proposed rule also sets clear expectations for litigants so that they may prepare for hearings in accordance with the statutes. Litigants may incur unnecessary litigation expenses if they are not explicitly made aware of the limitations associated with expedited hearings. The proposed rule also reduces or eliminates delays should litigants appear for a hearing assuming all issues may proceed on an expedited basis when the statute, by inference, limits the issues.

3. The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment;

There are no direct costs to the OAC to administer the proposed rule especially because the rule is mirroring statutory changes that have been in effect for at least two years. Litigants which includes employers, workers' compensation insurers, and injured workers may need to defend against applications for expedited hearings if filed pursuant to the applicable statutes, which may increase litigation costs. However, the proposed rules are implementing statutory changes in furtherance of the General Assembly's intent so the costs associated with this rule are not particularly relevant to the rulemaking process.

4. Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness; and

No adverse effects.

5. At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

There is no alternative because the proposed rules mirror statutory changes and clarifies the limitations associated with expedited hearings.

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DEPARTMENT: Personnel and Administration **AGENCY:** Office of Administrative Courts
CCR: 1 CCR 104-3 **DATE:** June 22, 2023

RULE TITLE OR SUBJECT: **16(J) MOTIONS**

Per the provisions of 24-4-103(2.5)(a), Colorado Revised Statutes, the cost-benefit analysis must include the following:

1. The reason for the rule or amendment;

This proposed rule supports the modernization efforts previously implemented by the Office of Administrative Courts. In 2014, the OAC began accepting e-mailed motions and proposed orders and implemented a paperless system involving routing the motion and proposed order for an ALJ's review, any modifications to the proposed order, and an electronic signature. The use of an editable proposed order allows the ALJ to make quick edits and sign the order without converting, printing, or re-typing the entire order. OAC has also standardized all of its orders with Arial font.

2. The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness;

The economic benefits include quicker turnaround times for the litigants' receipt of orders entered by ALJs. Editable formats eliminate the need for specialized software.

3. The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment;

There are no costs to the government or OAC to implement this rule. To the contrary, failure to implement this rule will require the OAC to purchase additional software licenses.
There are no costs to businesses or other entities apart from use of the internet to download free word processing software.

4. Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness; and

Litigants will need to access word processing software in order to comply with the rule. There are free options available online.

5. At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

As suggested by the requestor of this cost benefit analysis, the OAC could offer a template available online for proposed orders. The costs would be minimal as would the benefits because most litigants do not utilize the templates or forms provided by OAC.

The OAC could eliminate this rule and simply undertake the effort to convert PDF documents to an editable format, and engage in converting to the OAC's preferred format. The costs would include additional software licenses and time spent on converting documents or re-typing documents .

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DEPARTMENT: Personnel and Administration

AGENCY: Office of Administrative Courts

CCR: 1 CCR 104-3

DATE: June 22, 2023

RULE TITLE OR SUBJECT: **Rule 22 E - Hearing Exhibits**

Per the provisions of 24-4-103(2.5)(a), Colorado Revised Statutes, the cost-benefit analysis must include the following:

1. The reason for the rule or amendment;

Prior to the Covid-19 pandemic, the OAC conducted all hearings in person with very few exceptions. Pursuant to OAC's formal policies (Policy 1), litigants are required to provide paper copies of their exhibits to the administrative law judge (ALJ) at the commencement of hearing.

The transition to virtual hearings did not nullify Policy 1. Rather, the OAC allowed submission of electronic exhibits for the convenience of the litigants, and on occasion, required submission of paper copies. Some ALJs are unable to expeditiously review voluminous electronic exhibits. In addition, OAC does not have funding to ensure each ALJ has the equipment necessary to expeditiously review electronic exhibits. The proposed rule gives ALJs the option to request hard copies in order to ensure speedy resolution of the disputed issues but still implements modernization efforts by requiring electronic submissions.

2. The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness;

The benefits to OAC include cost savings related to the purchase of equipment and specialized software, and training associated with use of the software.

3. The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment;

This practice is presently in effect so OAC would realize no additional costs to administer this rule. Litigants, which include employers, insurance carriers, injured workers, and law firms would occasionally incur printing, mailing or courier costs.

4. Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness; and

No specific adverse effects apart from the occasional printing and mailing costs.

5. At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

- a. The OAC could print exhibits when necessary. The cost of printing and exhibit organization (increased staff time) would then shift to the OAC whereas it is currently borne by the litigants. The benefits would include increased flexibility and productivity for ALJs who work more efficiently with paper exhibits.

- b. The OAC could remove an electronic submission option from the proposed rules and adhere to the status quo, which would require that all exhibits be submitted in hard copy format pursuant to OAC Policy 1. The benefits would include increased flexibility and productivity for ALJs who work more efficiently with paper

exhibits. The costs would include decreased flexibility for those ALJs who prefer electronic exhibits; increased staff time to scan the exhibits to meet OAC's obligations to its agency partners; increased shredding costs; and increased storage space for files.

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