Chapter 34.05 RCW
ADMINISTRATIVE PROCEDURE ACT

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RCW 34.05.001 Legislative intent. The legislature intends, by enacting this 1988 Administrative Procedure Act, to clarify the existing law of administrative procedure, to achieve greater consistency with other states and the federal government in administrative procedure, and to provide greater public and legislative access to administrative decision making. The legislature intends that to the greatest extent possible and unless this chapter clearly requires otherwise, current agency practices and court decisions interpreting the Administrative Procedure Act in effect before July 1, 1989, shall remain in effect. The legislature also intends that the courts should interpret provisions of this chapter consistently with decisions of other courts interpreting similar provisions of other states, the federal government, and model acts. [1988 c 288 s 18.]

PART I
GENERAL PROVISIONS

RCW 34.05.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

(2) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law and any local governmental entity that may request the appointment of an administrative law judge under chapter 42.41 RCW.

(3) "Agency action" means licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include an agency decision regarding (a) contracting or procurement of goods, services, public works, and the purchase, lease, or acquisition by any other means, including eminent domain, of real estate, as well as all activities necessarily related to those functions, or (b) determinations as to the sufficiency of a showing of interest filed in support of a representation petition, or mediation or conciliation of labor disputes or arbitration of labor disputes under a collective bargaining law or similar statute, or (c) any sale, lease, contract, or other proprietary decision in the management of public lands or real property interests, or (d) the granting of a license, franchise, or permission for the use of trademarks, symbols, and similar property owned or controlled by the agency.

(4) "Agency head" means the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the agency head.

(5) "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective.

(6) "Filing" of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head.

(7) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions."

(8) "Interpretive statement" means a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.

(9)(a) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law, but does not include (i) a license required solely for revenue purposes, or (ii) a certification of an exclusive bargaining representative, or similar status, under a collective bargaining law or similar statute, or (iii) a license, franchise, or permission for use of trademarks, symbols, and similar property owned or controlled by the agency.

(b) "Licensing" includes the agency process respecting the issuance, denial, revocation, suspension, or modification of a license.

(10) "Mail" or "send," for purposes of any notice relating to rule making or policy or interpretive statements, means regular mail or electronic distribution, as provided in RCW 34.05.260. "Electronic distribution" or "electronically" means distribution by email or fax.

(11)(a) "Order," without further qualification, means a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.

(b) "Order of adoption" means the official written statement by which an agency adopts, amends, or repeals a rule.

(12) "Party to agency proceedings," or "party" in a context so indicating, means:

(a) A person to whom the agency action is specifically directed; or

(b) A person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(13) "Party to judicial review or civil enforcement proceedings," or "party" in a context so indicating, means:

(a) A person who files a petition for a judicial review or civil enforcement proceeding; or

(b) A person named as a party in a judicial review or civil enforcement proceeding, or allowed to participate as a party in a judicial review or civil enforcement proceeding.

(14) "Person" means any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(15) "Policy statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.

(16) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his or her designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes.

(17) "Rules review committee" or "committee" means the joint administrative rules review committee created pursuant to RCW 34.05.610 for the purpose of selectively reviewing existing and proposed rules of state agencies.

(18) "Rule making" means the process for formulation and adoption of a rule.

(19) "Service," except as otherwise provided in this chapter, means posting in the United States mail, properly addressed, postage prepaid, or personal or electronic service. Service by mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic transmission, or by commercial parcel delivery company. [2019 c 8 s 701; 2014 c 97 s 101; 2013 c 110 s 3; 2011 c 336 s 762; 1997 c 126 s 2; 1992 c 44 s 10; 1989 c 175 s 1; 1988 c 288 s 101; 1982 c 10 s 5. Prior: 1981 c 324 s 2; 1981 c 183 s 1; 1967 c 237 s 1; 1959 c 234 s 1. Formerly RCW 34.04.010.]

Effective date—2019 c 8 ss 102,103, 107, and 701-703: See note following RCW 82.04.067.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Effective dates—1992 c 44: See RCW 42.41.901.

Effective dates—1989 c 175: "Sections 1 through 35 and 37 through 185 of this act are necessary for the immediate preservation of the public peace, health, or safety, or the support of the state government and its existing public institutions, and shall take effect on July 1, 1989. Section 36 of this act shall take effect on July 1, 1990." [1989 c 175 s 186.]

Severability—1982 c 10: See note following RCW 6.13.080.

Legislative affirmation—1981 c 324: "The legislature affirms that all rule-making authority of state agencies and institutions of higher education is a function delegated by the legislature, and as such, shall be exercised pursuant to the conditions and restrictions contained in this act." [1981 c 324 s 1.]

Severability—1981 c 324: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 324 s 18.]

RCW 34.05.020 Savings—Authority of agencies to comply with chapter—Effect of subsequent legislation. Nothing in this chapter may be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of this chapter through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this chapter or its applicability to any agency except to the extent that such legislation shall do so expressly. [1988 c 288 s 102; 1967 c 237 s 24. Formerly RCW 34.04.940.]

RCW 34.05.030 Exclusions from chapter or parts of chapter. (1) This chapter shall not apply to:

(a) The state militia; or

(b) The clemency and pardons board; or

(c) The department of corrections or the indeterminate sentencing [sentence] review board with respect to persons who are in their custody or are subject to the jurisdiction of those agencies; or

(d) The transportation commission when exercising its powers as the state tolling authority under RCW 47.56.850 and 47.56.877.

(2) The provisions of RCW 34.05.410 through 34.05.598 shall not apply:

(a) To adjudicative proceedings of the board of industrial insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

(b) Except for actions pursuant to chapter 46.29 RCW, to the denial, suspension, or revocation of a driver's license by the department of licensing;

(c) To the department of labor and industries where another statute expressly provides for review of adjudicative proceedings of a

department action, order, decision, or award before the board of industrial insurance appeals;

(d) To actions of the Washington personnel resources board, the director of financial management, and the department of enterprise services when carrying out their duties under chapter 41.06 RCW;

(e) To adjustments by the department of revenue of the amount of the surcharge imposed under RCW 82.04.261;

(f) To actions to implement the provisions of chapter 70A.02 RCW, except as specified in RCW 70A.02.130; or

(g) To the extent they are inconsistent with any provisions of chapter 43.43 RCW.

(3) Unless a party makes an election for a formal hearing pursuant to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through 34.05.598 do not apply to a review hearing conducted by the board of tax appeals.

(4) The rule-making provisions of this chapter do not apply to:

(a) Reimbursement unit values, fee schedules, arithmetic conversion factors, and similar arithmetic factors used to determine payment rates that apply to goods and services purchased under contract for clients eligible under chapter 74.09 RCW; and

(b) Adjustments by the department of revenue of the amount of the surcharge imposed under RCW 82.04.261.

(5) All other agencies, whether or not formerly specifically excluded from the provisions of all or any part of the administrative procedure act, shall be subject to the entire act. [2025 c 293 s 2; 2021 c 314 s 24; 2015 3rd sp.s. c 1 s 309; 2011 1st sp.s. c 43 s 431; 2006 c 300 s 4; 2002 c 354 s 225; 1994 c 39 s 1; 1993 c 281 s 15; 1989 c 175 s 2; 1988 c 288 s 103; 1984 c 141 s 8; 1982 c 221 s 6; 1981 c 64 s 2; 1979 c 158 s 90; 1971 ex.s. c 57 s 17; 1971 c 21 s 1; 1967 ex.s. c 71 s 1; 1967 c 237 s 7; 1963 c 237 s 1; 1959 c 234 s 15. Formerly RCW 34.04.150.]

Findings—Intent—2025 c 293: "The legislature finds that most tolling facilities in Washington state are subject to strict bond covenants and financial requirements, requiring swift action in response to changing circumstances. However, the current process for setting or adjusting toll rates or toll rate policies takes an average of 160 days to complete due to requirements in the administrative procedure act, chapter 34.05 RCW. The legislature further finds that this process lacks the flexibility that is necessary to quickly adjust tolls to meet legally mandated revenue and performance requirements in response to unforeseen circumstances. Therefore, in order to address the challenges with the current toll rate setting process, it is the intent of the legislature to exempt toll setting from the administrative procedure act and to instead establish a toll setting process that can be carried out efficiently and expeditiously while maintaining public transparency." [2025 c 293 s 1.]

Effective date—2025 c 293: "This act takes effect January 1, 2026." [2025 c 293 s 9.]

Conflict with federal requirements—2021 c 314: See note following RCW 70A.02.005.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective dates—Contingent effective date—2006 c 300: See note following RCW 82.04.261.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Effective date—1993 c 281: See note following RCW 41.06.022.

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.040 Operation of chapter if in conflict with federal law. If any part of this chapter is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this chapter is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. [1988 c 288 s 104; 1959 c 234 s 19. Formerly RCW 34.04.930.]

RCW 34.05.050 Waiver. Except to the extent precluded by another provision of law, a person may waive any right conferred upon that person by this chapter. [1988 c 288 s 105.]

RCW 34.05.060 Informal settlements. Except to the extent precluded by another provision of law and subject to approval by agency order, informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is strongly encouraged. Agencies may establish by rule specific procedures for attempting and executing informal settlement of matters. This section does not require any party or other person to settle a matter. [1988 c 288 s 106.]

RCW 34.05.070 Conversion of proceedings. (1) If it becomes apparent during the course of an adjudicative or rule-making proceeding undertaken pursuant to this chapter that another form of proceeding under this chapter is necessary, is in the public interest, or is more appropriate to resolve issues affecting the participants, on his or her own motion or on the motion of any party, the presiding officer or other official responsible for the original proceeding shall advise the parties of necessary steps for conversion and, if within the official's power, commence the new proceeding. If the agency refuses to convert to another proceeding, that decision is not subject to judicial review. Commencement of the new proceeding shall be accomplished pursuant to the procedural rules of the new proceeding, except that elements already performed need not be repeated.

(2) If appropriate, a new proceeding may be commenced independently of the original proceeding or may replace the original proceeding.

(3) Conversion to a replacement proceeding shall not be undertaken if the rights of any party will be substantially prejudiced.

(4) To the extent feasible the record of the original proceeding shall be included in the record of a replacement proceeding.

(5) The time of commencement of a replacement proceeding shall be considered to be the time of commencement of the original proceeding. [1988 c 288 s 107.]

RCW 34.05.080 Variation from time limits. (1) An agency may modify time limits established in this chapter only as set forth in this section. An agency may not modify time limits relating to rule-making procedures or the time limits for filing a petition for judicial review specified in RCW 34.05.542.

(2) The time limits set forth in this chapter may be modified by rule of the agency or by rule of the chief administrative law judge if:

(a) The agency has an agency head composed of a body of individuals serving part time who do not regularly meet on a schedule that would allow compliance with the time limits of this chapter in the normal course of agency affairs;

(b) The agency does not have a permanent staff to comply with the time limits set forth in this chapter without substantial loss of efficiency and economy; and

(c) The rights of persons dealing with the agency are not substantially impaired.

(3) The time limits set forth in this chapter may be modified by rule if the agency determines that the change is necessary to the performance of its statutory duties. Agency rule may provide for emergency variation when required in a specific case.

(4) Time limits may be changed pursuant to RCW 34.05.040.

(5) Time limits may be waived pursuant to RCW 34.05.050.

(6) Any modification in the time limits set forth in this chapter shall be to new time limits that are reasonable under the specific circumstances.

(7) In an adjudicative proceeding, any agency whose time limits vary from those set forth in this chapter shall provide reasonable and adequate notice of the pertinent time limits to persons affected. The notice may be given by the presiding or reviewing officer involved in the proceeding.

(8) Two years after July 1, 1989, the chief administrative law judge shall cause a survey to be made of variations by agencies from the time limits set forth in this chapter, and shall submit a written report of the results of the survey to the office of the governor. [1989 c 175 s 3; 1988 c 288 s 108.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.090 Forest practices board—Emergency rules. Emergency rules adopted by the forest practices board pertaining to forest practices and the protection of aquatic resources are subject to this chapter to the extent provided in RCW 76.09.055. [1999 sp.s. c 4 s 202.]

Effective date—1999 sp.s. c 4 ss 201, 202, and 203: See note following RCW 76.09.055.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

RCW 34.05.100 Respectful language. (1) All agency orders creating new rules, or amending existing rules, shall be formulated in accordance with the requirements of RCW 44.04.280 regarding the use of respectful language.

(2) No agency rule is invalid because it does not comply with this section. [2004 c 175 s 2.]

RCW 34.05.110 Violations of state law or agency rule by small businesses—Notice requirements—Waiver of penalty for first-time paperwork violations. (1) Agencies must provide to a small business a copy of the state law or agency rule that a small business is violating and a period of at least seven calendar days to correct the violation before the agency may impose any fines, civil penalties, or administrative sanctions for a violation of a state law or agency rule by a small business. If no correction is possible or if an agency is acting in response to a complaint made by a third party and the third party would be disadvantaged by the application of this subsection, the requirements in this subsection do not apply.

(2) Except as provided in subsection (4) of this section, agencies shall waive any fines, civil penalties, or administrative sanctions for first-time paperwork violations by a small business.

(3) When an agency waives a fine, penalty, or sanction under this section, when possible it shall require the small business to correct the violation within a reasonable period of time, in a manner specified by the agency. If correction is impossible, no correction may be required and failure to correct is not grounds for reinstatement of fines, penalties, or sanctions under subsection (5)(b) of this section.

(4) Exceptions to requirements of subsection (1) of this section and the waiver requirement in subsection (2) of this section may be made for any of the following reasons:

(a) The agency head determines that the effect of the violation or waiver presents a direct danger to the public health, results in a loss of income or benefits to an employee, poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest;

(b) The violation involves a knowing or willful violation;

(c) The violation is of a requirement concerning the assessment, collection, or administration of any tax, tax program, debt, revenue, receipt, a regulated entity's financial filings, or insurance rate or form filing;

(d) The requirements of this section are in conflict with federal law or program requirements, federal requirements that are a prescribed condition to the allocation of federal funds to the state, or the requirements for eligibility of employers in this state for federal unemployment tax credits, as determined by the agency head;

(e) The small business committing the violation previously violated a substantially similar requirement; or

(f) The owner or operator of the small business committing the violation owns or operates, or owned or operated a different small business which previously violated a substantially similar requirement.

(5)(a) Nothing in this section prohibits an agency from waiving fines, civil penalties, or administrative sanctions incurred by a small business for a paperwork violation that is not a first-time offense.

(b) Any fine, civil penalty, or administrative sanction that is waived under this section may be reinstated and imposed in addition to any additional fines, penalties, or administrative sanctions associated with a subsequent violation for noncompliance with a substantially similar paperwork requirement, or failure to correct the previous violation as required by the agency under subsection (3) of this section.

(6) Nothing in this section may be construed to diminish the responsibility for any citizen or business to apply for and obtain a permit, license, or authorizing document that is required to engage in a regulated activity, or otherwise comply with state or federal law.

(7) Nothing in this section shall be construed to apply to small businesses required to provide accurate and complete information and documentation in relation to any claim for payment of state or federal funds or who are licensed or certified to provide care and services to vulnerable adults or children.

(8) Nothing in this section affects the attorney general's authority to impose fines, civil penalties, or administrative sanctions as otherwise authorized by law; nor shall this section affect the attorney general's authority to enforce the consumer protection act, chapter 19.86 RCW.

(9) As used in this section:

(a) "Small business" means a business with two hundred fifty or fewer employees or a gross revenue of less than seven million dollars annually as reported on its most recent federal income tax return or its most recent return filed with the department of revenue.

(b) "Paperwork violation" means the violation of any statutory or regulatory requirement that mandates the collection of information by an agency, or the collection, posting, or retention of information by a small business. This includes but is not limited to requirements in the Revised Code of Washington, the Washington Administrative Code, the Washington State Register, or any other agency directive.

(c) "First-time paperwork violation" means the first instance of a particular or substantially similar paperwork violation. [2011 c 18 s 1; 2010 c 194 s 1; 2009 c 358 s 1.]

RCW 34.05.120 Extension of rights and responsibilities—State registered domestic partnerships. (1) Subject to the availability of funds appropriated for this specific purpose, except where inconsistent with federal law or regulations applicable to federal benefit programs, agencies shall amend their rules to reflect the intent of the legislature to ensure that all privileges, immunities, rights, benefits, or responsibilities granted or imposed by statute to an individual because that individual is or was a spouse in a marital relationship are granted or imposed on equivalent terms to an individual because that individual is or was in a state registered domestic partnership.

(2) Except where inconsistent with federal law or regulations applicable to federal benefit programs, all agency orders creating new rules, or amending existing rules, shall be formulated to reflect the intent stated in subsection (1) of this section.

(3) No agency rule is invalid because it does not comply with this section. [2009 c 521 s 2.]

PART II
PUBLIC ACCESS TO AGENCY RULES

RCW 34.05.210 Code and register—Publication and distribution—Omissions, removals, revisions—Judicial notice. (1)(a) The code reviser shall cause the Washington Administrative Code to be compiled, indexed by subject, and published. All current, permanently effective rules of each agency shall be published in the Washington Administrative Code. Compilations shall be supplemented or revised as often as necessary and at least annually in a form compatible with the main compilation.

(b) The statute law committee, in its discretion, may publish the official copy of the Washington Administrative Code in a digital format on the code reviser or legislative website.

(c) The code reviser shall provide a paper copy of the entire Washington Administrative Code or any section or sections of the code upon request. The code reviser may charge a minimal fee sufficient to cover costs of printing and mailing the paper copy.

(d) The code reviser shall provide a limited number of free paper copies of the Washington Administrative Code to libraries or institutions on request for access and archival purposes.

(2) Subject to the provisions of this chapter, the code reviser shall prescribe a uniform numbering system, form, and style for all proposed and adopted rules.

(3) The code reviser shall publish a register setting forth the text of all rules filed during the appropriate register publication period.

(4) The code reviser may omit from the register or the compilation, rules that would be unduly cumbersome, expensive, or otherwise inexpedient to publish, if such rules are made available in printed or processed form on application to the adopting agency, and if the register or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies thereof may be obtained.

(5) The code reviser may edit and revise rules for publication, codification, and compilation, without changing the meaning of any such rule.

(6) When a rule, in whole or in part, is declared invalid and unconstitutional by a court of final appeal, the adopting agency shall give notice to that effect in the register. With the consent of the attorney general, the code reviser may remove obsolete rules or parts of rules from the Washington Administrative Code when:

(a) The rules are declared unconstitutional by a court of final appeal; or

(b) The adopting agency ceases to exist and the rules are not transferred by statute to a successor agency.

(7) Compilations and registers shall be made available for purchase, in print or tangible, digital format, at a price fixed by the code reviser.

(8) The board of law library trustees of each county shall keep and maintain a complete and current set of registers and compilations when required for use and inspection as provided in chapter 27.24 RCW. If the register or compilation is published in digital format on the code reviser or legislative website, providing on-site access to the digital version of the register shall satisfy the requirements of this subsection for access to the register.

(9) Judicial notice shall be taken of rules filed and published as provided in RCW 34.05.380 and this section. [2011 c 156 s 4; 2007 c 456 s 3; 1988 c 288 s 201; 1982 1st ex.s. c 32 s 7; 1980 c 186 s 12; 1977 ex.s. c 240 s 9; 1959 c 234 s 5. Formerly RCW 34.04.050.]

Purpose—Finding—Intent—2011 c 156: See note following RCW 1.08.080.

Severability—1980 c 186: See note following RCW 34.05.320.

Effective date—1977 ex.s. c 240: See RCW 34.08.905.

Nonbinding effect of unpublished rules and procedures: RCW 42.56.040.

RCW 34.05.220 Rules for agency procedure—Indexes of opinions and statements. (1) In addition to other rule-making requirements imposed by law:

(a) Each agency may adopt rules governing the formal and informal procedures prescribed or authorized by this chapter and rules of practice before the agency, together with forms and instructions. If an agency has not adopted procedural rules under this section, the model rules adopted by the chief administrative law judge under RCW 34.05.250 govern procedures before the agency.

(b) To assist interested persons dealing with it, each agency shall adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information and make submissions or requests. No person may be required to comply with agency procedure not adopted as a rule as herein required.

(2) To the extent not prohibited by federal law or regulation, nor prohibited for reasons of confidentiality by state law, each agency shall keep on file for public inspection all final orders, decisions, and opinions in adjudicative proceedings, interpretive statements, policy statements, and any digest or index to those orders, decisions, opinions, or statements prepared by or for the agency.

(3) No agency order, decision, or opinion is valid or effective against any person, nor may it be invoked by the agency for any purpose, unless it is available for public inspection. This subsection is not applicable in favor of any person who has actual knowledge of the order, decision, or opinion. The agency has the burden of proving that knowledge, but may meet that burden by proving that the person has been properly served with a copy of the order.

(4) Each agency that is authorized by law to exercise discretion in deciding individual cases is encouraged to formalize the general

principles that may evolve from these decisions by adopting the principles as rules that the agency will follow until they are amended or repealed.

(5) To the extent practicable, any rule proposed or adopted by an agency should be clearly and simply stated, so that it can be understood by those required to comply.

(6) The departments of employment security, labor and industries, ecology, and revenue shall develop and use a notification process to communicate information to the public regarding the postadoption notice required by RCW 34.05.362. [2003 c 246 s 2; 1994 c 249 s 24; 1989 c 175 s 4; 1988 c 288 s 202; 1981 c 67 s 13; 1967 c 237 s 2; 1959 c 234 s 2. Formerly RCW 34.04.020.]

Finding—2003 c 246: See note following RCW 34.05.362.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

RCW 34.05.230 Interpretive and policy statements. (1) An agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. To better inform and involve the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.

(2) A person may petition an agency requesting the conversion of interpretive and policy statements into rules. Upon submission, the agency shall notify the joint administrative rules review committee of the petition. Within sixty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with this chapter.

(3) Each agency shall maintain a roster of interested persons, consisting of persons who have requested in writing to be notified of all interpretive and policy statements issued by that agency. Each agency shall update the roster periodically and eliminate persons who do not indicate a desire to continue on the roster. Whenever an agency issues an interpretive or policy statement, it shall send a copy of the statement to each person listed on the roster. The agency may charge a nominal fee to the interested person for this service.

(4) Whenever an agency issues an interpretive or policy statement, it shall submit to the code reviser for publication in the Washington State Register a statement describing the subject matter of the interpretive or policy statement, and listing the person at the agency from whom a copy of the interpretive or policy statement may be obtained. [2004 c 31 s 3; 2001 c 25 s 1; 1997 c 409 s 202; 1996 c 206 s 12; 1995 c 403 s 702; 1988 c 288 s 203.]

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Findings—1996 c 206: See note following RCW 43.05.030.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

RCW 34.05.240 Declaratory order by agency—Petition. (1) Any person may petition an agency for a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. The petition shall set forth facts and reasons on which the petitioner relies to show:

(a) That uncertainty necessitating resolution exists;

(b) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;

(c) That the uncertainty adversely affects the petitioner;

(d) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and

(e) That the petition complies with any additional requirements established by the agency under subsection (2) of this section.

(2) Each agency may adopt rules that provide for: (a) The form, contents, and filing of petitions for a declaratory order; (b) the procedural rights of persons in relation thereto; and (c) the disposition of those petitions. These rules may include a description of the classes of circumstances in which the agency will not enter a declaratory order and shall be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agencies to provide reliable advice.

(3) Within fifteen days after receipt of a petition for a declaratory order, the agency shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable.

(4) RCW 34.05.410 through 34.05.494 apply to agency proceedings for declaratory orders only to the extent an agency so provides by rule or order.

(5) Within thirty days after receipt of a petition for a declaratory order an agency, in writing, shall do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;

(c) Set a specified time no more than ninety days after receipt of the petition by which it will enter a declaratory order; or

(d) Decline to enter a declaratory order, stating the reasons for its action.

(6) The time limits of subsection (5) (b) and (c) of this section may be extended by the agency for good cause.

(7) An agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(8) A declaratory order has the same status as any other order entered in an agency adjudicative proceeding. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons

for its conclusions. [1988 c 288 s 204; 1959 c 234 s 8. Formerly RCW 34.04.080.]

RCW 34.05.250 Model rules of procedure. The chief administrative law judge shall adopt model rules of procedure appropriate for use by as many agencies as possible. The model rules shall deal with all general functions and duties performed in common by the various agencies. Each agency shall adopt as much of the model rules as is reasonable under its circumstances. Any agency adopting a rule of procedure that differs from the model rules shall include in the order of adoption a finding stating the reasons for variance. [1988 c 288 s 205.]

RCW 34.05.260 Electronic distribution. (1) In order to provide the greatest possible access to agency documents to the most people, agencies are encouraged to make their rule, interpretive, and policy information available through electronic distribution as well as through the regular mail. Agencies that have the capacity to transmit electronically may ask persons who are on mailing lists or rosters for copies of interpretive statements, policy statements, preproposal statements of inquiry, and other similar notices whether they would like to receive the notices electronically.

(2) Electronic distribution to persons who request it may substitute for mailed copies related to rule making or policy or interpretive statements. If a notice is distributed electronically, the agency is not required to transmit the actual notice form but must send all the information contained in the notice.

(3) Agencies which maintain mailing lists or rosters for any notices relating to rule making or policy or interpretive statements may establish different rosters or lists by general subject area. [1997 c 126 s 1.]

RCW 34.05.270 Agency websites for rule-making information. Within existing resources, each state agency shall maintain a website that contains the agency's rule-making information. A direct link to the agency's rule-making page must be displayed on the agency's homepage. The rule-making website shall include the complete text of all proposed rules, emergency rules, and permanent rules proposed or adopted within the past twelve months, or include a direct link to the index page on the Washington State Register website that contains links to the complete text of all proposed rules, emergency rules, and permanent rules proposed or adopted within the past twelve months by that state agency. For proposed rules, the time, date, and place for the rule-making hearing and the procedures and timelines for submitting written comments and supporting data must be posted on the website. [2009 c 93 s 1.]

RCW 34.05.271 Department of fish and wildlife—Significant agency action—Identification and categorization of sources of information used. (1)(a) Before taking a significant agency action, the department of fish and wildlife must identify the sources of information reviewed and relied upon by the agency in the course of

preparing to take significant agency action. Peer-reviewed literature, if applicable, must be identified, as well as any scientific literature or other sources of information used. The department of fish and wildlife shall make available on the agency's website the index of records required under RCW 42.56.070 that are relied upon, or invoked, in support of a proposal for significant agency action.

(b) On the agency's website, the department of fish and wildlife must identify and categorize each source of information that is relied upon in the form of a bibliography, citation list, or similar list of sources. The categories in (c) of this subsection do not imply or infer any hierarchy or level of quality.

(c) The bibliography, citation list, or similar list of sources must categorize the sources of information as belonging to one or more of the following categories:

(i) Independent peer review: Review is overseen by an independent third party;

(ii) Internal peer review: Review by staff internal to the department of fish and wildlife;

(iii) External peer review: Review by persons that are external to and selected by the department of fish and wildlife;

(iv) Open review: Documented open public review process that is not limited to invited organizations or individuals;

(v) Legal and policy document: Documents related to the legal framework for the significant agency action including but not limited to:

(A) Federal and state statutes;

(B) Court and hearings board decisions;

(C) Federal and state administrative rules and regulations; and

(D) Policy and regulatory documents adopted by local governments;

(vi) Data from primary research, monitoring activities, or other sources, but that has not been incorporated as part of documents reviewed under the processes described in (c)(i), (ii), (iii), and (iv) of this subsection;

(vii) Records of the best professional judgment of department of fish and wildlife employees or other individuals; or

(viii) Other: Sources of information that do not fit into one of the categories identified in this subsection (1)(c).

(2)(a) For the purposes of this section, "significant agency action" means an act of the department of fish and wildlife that:

(i) Results in the development of a significant legislative rule as defined in RCW 34.05.328;

(ii) Results in the development of technical guidance, technical assessments, or technical documents that are used to directly support implementation of a state rule or state statute; or

(iii) Results in the development of fish and wildlife recovery plans.

(b) "Significant agency action" does not include rule making by the department of fish and wildlife associated with fishing and hunting rules.

(3) This section is not intended to affect agency action regarding individual permitting, compliance and enforcement decisions, or guidance provided by an agency to a local government on a case-by-case basis. [2014 c 21 s 1; 2013 c 68 s 2.]

Finding—Intent—2013 c 68: "(1) The legislature finds that it is critically important that scientific information used to inform public

policy be of the highest quality and integrity. Furthermore, the legislature recognizes that a public benefit is derived from greater transparency as to what scientific information, data, or records are being used to inform public policy or relied upon in agency decision making.

(2) Therefore, in order to help ensure that agencies routinely use scientifically credible information in conducting their policy-making functions, it is the intent of the legislature to have those sources of scientific information reviewed and relied upon by agencies be identified in a clear and transparent way." [2013 c 68 s 1.]

RCW 34.05.272 Department of ecology—Significant agency action—Identification and categorization of sources of information used. (1) This section applies only to the water quality and shorelands and environmental assistance programs within the department of ecology and to actions taken by the department of ecology under chapter 70A.350 RCW.

(2)(a) Before taking a significant agency action, which includes each department of ecology rule to implement a determination of a regulatory action specified in RCW 70A.350.040(1) (b) or (c), the department of ecology must identify the sources of information reviewed and relied upon by the agency in the course of preparing to take significant agency action. Peer-reviewed literature, if applicable, must be identified, as well as any scientific literature or other sources of information used. The department of ecology shall make available on the agency's website the index of records required under RCW 42.56.070 that are relied upon, or invoked, in support of a proposal for significant agency action.

(b) On the agency's website, the department of ecology must identify and categorize each source of information that is relied upon in the form of a bibliography, citation list, or similar list of sources. The categories in (c) of this subsection do not imply or infer any hierarchy or level of quality.

(c) The bibliography, citation list, or similar list of sources must categorize the sources of information as belonging to one or more of the following categories:

(i) Independent peer review: Review is overseen by an independent third party;

(ii) Internal peer review: Review by staff internal to the department of ecology;

(iii) External peer review: Review by persons that are external to and selected by the department of ecology;

(iv) Open review: Documented open public review process that is not limited to invited organizations or individuals;

(v) Legal and policy document: Documents related to the legal framework for the significant agency action including but not limited to:

(A) Federal and state statutes;

(B) Court and hearings board decisions;

(C) Federal and state administrative rules and regulations; and

(D) Policy and regulatory documents adopted by local governments;

(vi) Data from primary research, monitoring activities, or other sources, but that has not been incorporated as part of documents reviewed under the processes described in (c)(i), (ii), (iii), and (iv) of this subsection;

(vii) Records of the best professional judgment of department of ecology employees or other individuals; or

(viii) Other: Sources of information that do not fit into one of the categories identified in this subsection (2)(c).

(3) For the purposes of this section, "significant agency action" means an act of the department of ecology that:

(a) Results in the development of a significant legislative rule as defined in RCW 34.05.328; or

(b) Results in the development of technical guidance, technical assessments, or technical documents that are used to directly support implementation of a state rule or state statute.

(4) This section is not intended to affect agency action regarding individual permitting, compliance and enforcement decisions, or guidance provided by an agency to a local government on a case-by-case basis. [2021 c 65 s 23; 2019 c 292 s 11; 2014 c 22 s 1; 2013 c 69 s 2.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

Short title—2019 c 292: See RCW 70A.350.900.

Finding—Intent—2013 c 69: "(1) The legislature finds that it is critically important that scientific information used to inform public policy be of the highest quality and integrity. Furthermore, the legislature recognizes that a public benefit is derived from greater transparency as to what scientific information, data, or records are being used to inform public policy or relied upon in agency decision making.

(2) Therefore, in order to help ensure that agencies routinely use scientifically credible information in conducting their policy-making functions, it is the intent of the legislature to have those sources of scientific information reviewed and relied upon by agencies be identified in a clear and transparent way." [2013 c 69 s 1.]

PART III
RULE-MAKING PROCEDURES

RCW 34.05.310 Prenotice inquiry—Negotiated and pilot rules. (1)(a) To meet the intent of providing greater public access to administrative rule making and to promote consensus among interested parties, agencies must solicit comments from the public on a subject of possible rule making before filing with the code reviser a notice of proposed rule making under RCW 34.05.320. The agency must prepare a statement of inquiry that:

(i) Identifies the specific statute or statutes authorizing the agency to adopt rules on this subject;

(ii) Discusses why rules on this subject may be needed and what they might accomplish;

(iii) Identifies other federal and state agencies that regulate this subject, and describes the process whereby the agency would coordinate the contemplated rule with these agencies;

(iv) Discusses the process by which the rule might be developed, including, but not limited to, negotiated rule making, pilot rule making, or agency study;

(v) Specifies the process by which interested parties can effectively participate in the decision to adopt a new rule and formulation of a proposed rule before its publication.

(b) The statement of inquiry must be filed with the code reviser for publication in the state register at least thirty days before the date the agency files notice of proposed rule making under RCW 34.05.320 and the statement, or a summary of the information contained in that statement, must be sent to any party that has requested receipt of the agency's statements of inquiry.

(2) Agencies are encouraged to develop and use new procedures for reaching agreement among interested parties before publication of notice and the adoption hearing on a proposed rule. Examples of new procedures include, but are not limited to:

(a) Negotiated rule making by which representatives of an agency and of the interests that are affected by a subject of rule making, including, where appropriate, county and city representatives, seek to reach consensus on the terms of the proposed rule and on the process by which it is negotiated; and

(b) Pilot rule making which includes testing the feasibility of complying with or administering draft new rules or draft amendments to existing rules through the use of volunteer pilot groups in various areas and circumstances, as provided in RCW 34.05.313 or as otherwise provided by the agency.

(3)(a) An agency must make a determination whether negotiated rule making, pilot rule making, or another process for generating participation from interested parties prior to development of the rule is appropriate.

(b) An agency must include a written justification in the rule-making file if an opportunity for interested parties to participate in the rule-making process prior to publication of the proposed rule has not been provided.

(4) Except as provided in subsection (5) of this section, this section does not apply to:

(a) Emergency rules adopted under RCW 34.05.350;

(b) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(c) Rules adopting or incorporating 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;

(d) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(e) Rules the content of which is explicitly and specifically dictated by statute;

(f) Rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045; or

(g) Rules that adopt, amend, or repeal:

(i) A procedure, practice, or requirement relating to agency hearings; or

(ii) A filing or related process requirement for applying to an agency for a license or permit.

(5) Notwithstanding subsection (4) of this section, this section applies to all rules adopted by the department of health or a disciplining authority specified in RCW 18.130.040 that set or adjust fees affecting professions regulated under chapter 18.130 RCW. [2019 c 303 s 1; 2011 c 298 s 20; 2004 c 31 s 1; 1995 c 403 s 301; 1994 c 249 s 1; 1993 c 202 s 2; 1989 c 175 s 5; 1988 c 288 s 301.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 298: See notes following RCW 19.02.020.

Application—1995 c 403 ss 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Severability—1994 c 249: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 249 s 38.]

Application—1994 c 249: "This act applies prospectively only and not retroactively." [1994 c 249 s 36.]

Finding—Intent—1993 c 202: "The legislature finds that while the 1988 Administrative Procedure Act expanded public participation in the agency rule-making process, there continue to be instances when participants have developed adversarial relationships with each other, resulting in the inability to identify all of the issues, the failure to focus on solutions to problems, unnecessary delays, litigation, and added cost to the agency, affected parties, and the public in general.

When interested parties work together, it is possible to negotiate development of a rule that is acceptable to all affected, and that conforms to the intent of the statute the rule is intended to implement.

After a rule is adopted, unanticipated negative impacts may emerge. Examples include excessive costs of administration for the agency and compliance by affected parties, technical conditions that may be physically or economically unfeasible to meet, problems of interpretation due to lack of clarity, and reporting requirements that duplicate or conflict with those already in place.

It is therefore the intent of the legislature to encourage flexible approaches to developing administrative rules, including but not limited to negotiated rule making and a process for testing the feasibility of adopted rules, often called the pilot rule process. However, nothing in chapter 202, Laws of 1993 shall be construed to create any mandatory duty for an agency to use the procedures in RCW 34.05.310 or 34.05.313 in any particular instance of rule making. Agencies shall determine, in their discretion, when it is appropriate to use these procedures." [1993 c 202 s 1.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Rules coordinator duties regarding business: RCW 43.17.310.

RCW 34.05.312 Rules coordinator. Each agency shall designate a rules coordinator, who shall have knowledge of the subjects of rules being proposed or prepared within the agency for proposal, maintain the records of any such action, and respond to public inquiries about possible, proposed, or adopted rules and the identity of agency personnel working, reviewing, or commenting on them. The office and mailing address of the rules coordinator shall be published in the state register at the time of designation and maintained thereafter on the code reviser website for the duration of the designation. The rules coordinator may be an employee of another agency. [2007 c 456 s 4; 2003 c 246 s 4; 1993 c 202 s 3.]

Finding—2003 c 246: See note following RCW 34.05.362.

Finding—Intent—1993 c 202: See note following RCW 34.05.310.

RCW 34.05.313 Feasibility studies—Pilot projects. (1) During the development of a rule or after its adoption, an agency may develop methods for measuring or testing the feasibility of complying with or administering the rule and for identifying simple, efficient, and economical alternatives for achieving the goal of the rule. A pilot project shall include public notice, participation by volunteers who are or will be subject to the rule, a high level of involvement from agency management, reasonable completion dates, and a process by which one or more parties may withdraw from the process or the process may be terminated. Volunteers who agree to test a rule and attempt to meet the requirements of the draft rule, to report periodically to the proposing agency on the extent of their ability to meet the requirements of the draft rule, and to make recommendations for improving the draft rule shall not be obligated to comply fully with the rule being tested nor be subject to any enforcement action or other sanction for failing to comply with the requirements of the draft rule.

(2) An agency conducting a pilot rule project authorized under subsection (1) of this section may waive one or more provisions of agency rules otherwise applicable to participants in such a pilot project if the agency first determines that such a waiver is in the public interest and necessary to conduct the project. Such a waiver may be only for a stated period of time, not to exceed the duration of the project.

(3) The findings of the pilot project should be widely shared and, where appropriate, adopted as amendments to the rule.

(4) If an agency conducts a pilot rule project in lieu of meeting the requirements of the regulatory fairness act, chapter 19.85 RCW, the agency shall ensure the following conditions are met:

(a) If over ten small businesses are affected, there shall be at least ten small businesses in the test group and at least one-half of the volunteers participating in the pilot test group shall be small businesses.

(b)(i) If there are at least one hundred businesses affected, the participation by small businesses in the test group shall be as follows:

(A) Not less than twenty percent of the small businesses must employ twenty-six to fifty employees;

(B) Not less than twenty percent of the small businesses must employ eleven to twenty-six employees; and

(C) Not less than twenty percent of the small businesses must employ zero to ten employees.

(ii) If there do not exist a sufficient number of small businesses in each size category set forth in (b)(i) of this subsection willing to participate in the pilot project to meet the minimum requirements of that subsection, then the agency must comply with this section to the maximum extent practicable.

(c) The agency may not terminate the pilot project before completion.

(d) Before filing the notice of proposed rule making pursuant to RCW 34.05.320, the agency must prepare a report of the pilot rule project that includes:

(i) A description of the difficulties small businesses had in complying with the pilot rule;

(ii) A list of the recommended revisions to the rule to make compliance with the rule easier or to reduce the cost of compliance with the rule by the small businesses participating in the pilot rule project;

(iii) A written statement explaining the options it considered to resolve each of the difficulties described and a statement explaining its reasons for not including a recommendation by the pilot test group to revise the rule; and

(iv) If the agency was unable to meet the requirements set forth in (b)(i) of this subsection, a written explanation of why it was unable to do so and the steps the agency took to include small businesses in the pilot project. [1995 c 403 s 303; 1993 c 202 s 4.]

Application—1995 c 403 ss 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Finding—Intent—1993 c 202: See note following RCW 34.05.310.

RCW 34.05.314 Rules development agenda. Each state agency shall prepare a semiannual agenda for rules under development. The agency shall file the agenda with the code reviser for publication in the state register not later than January 31st and July 31st of each year. Not later than three days after its publication in the state register, the agency shall send a copy of the agenda to each person who has requested receipt of a copy of the agenda. The agency shall also submit the agenda to the director of financial management, the rules review committee, and any other state agency that may reasonably be expected to have an interest in the subject of rules that will be developed. [1997 c 409 s 206.]

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

RCW 34.05.315 Rule-making docket. (1) Each agency shall maintain a current public rule-making docket. The rule-making docket shall contain the information specified in subsection (3) of this section.

(2) The rule-making docket shall contain a listing of each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced by publication of a notice of proposed rule adoption under RCW 34.05.320 until the proposed rule is withdrawn under RCW 34.05.335 or is adopted by the agency.

(3) For each rule-making proceeding, the docket shall indicate all of the following:

(a) The name and address of agency personnel responsible for the proposed rule;

(b) The subject of the proposed rule;

(c) A citation to all notices relating to the proceeding that have been published in the state register under RCW 34.05.320;

(d) The place where written submissions about the proposed rule may be inspected;

(e) The time during which written submissions will be accepted;

(f) The current timetable established for the agency proceeding, including the time and place of any rule-making hearing, the date of the rule's adoption, filing, publication, and its effective date. [1989 c 175 s 6; 1988 c 288 s 302.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.320 Notice of proposed rule—Contents—Distribution by agency—Institutions of higher education. (1) At least twenty days before the rule-making hearing at which the agency receives public comment regarding adoption of a rule, the agency shall cause notice of the hearing to be published in the state register. The publication constitutes the proposal of a rule. The notice shall include all of the following:

(a) A title, a description of the rule's purpose, and any other information which may be of assistance in identifying the rule or its purpose;

(b) Citations of the statutory authority for adopting the rule and the specific statute the rule is intended to implement;

(c) A short explanation of the rule, its purpose, and anticipated effects, including in the case of a proposal that would modify existing rules, a short description of the changes the proposal would make, and a statement of the reasons supporting the proposed action;

(d) The agency personnel, with their office location and telephone number, who are responsible for the drafting, implementation, and enforcement of the rule;

(e) The name of the person or organization, whether private, public, or governmental, proposing the rule;

(f) Agency comments or recommendations, if any, regarding statutory language, implementation, enforcement, and fiscal matters pertaining to the rule;

(g) Whether the rule is necessary as the result of federal law or federal or state court action, and if so, a citation to such law or court decision;

(h) When, where, and how persons may present their views on the proposed rule;

(i) The date on which the agency intends to adopt the rule;

(j) A copy of the small business economic impact statement prepared under chapter 19.85 RCW, or a copy of the school district fiscal impact statement under RCW 28A.305.135 in the case of the state board of education, or an explanation for why the agency did not prepare the statement;

(k) A statement indicating whether RCW 34.05.328 applies to the rule adoption; and

(l) If RCW 34.05.328 does apply, a statement indicating that a copy of the preliminary cost-benefit analysis described in RCW 34.05.328(1)(c) is available.

(2)(a) Upon filing notice of the proposed rule with the code reviser, the adopting agency shall have copies of the notice on file and available for public inspection. Except as provided in (b) of this subsection, the agency shall forward three copies of the notice to the rules review committee.

(b) A pilot of at least ten agencies, including the departments of labor and industries, fish and wildlife, revenue, ecology, retirement systems, and health, shall file the copies required under this subsection, as well as under RCW 34.05.350 and 34.05.353, with the rules review committee electronically for a period of four years from June 10, 2004. The office of regulatory assistance shall negotiate the details of the pilot among the agencies, the legislature, and the code reviser.

(3) No later than three days after its publication in the state register, the agency shall cause either a copy of the notice of proposed rule adoption, or a summary of the information contained on the notice, to be mailed to each person, city, and county that has made a request to the agency for a mailed copy of such notices. An agency may charge for the actual cost of providing a requesting party mailed copies of these notices.

(4) In addition to the notice required by subsections (1) and (2) of this section, an institution of higher education shall cause the notice to be published in the campus or standard newspaper of the institution at least seven days before the rule-making hearing. [2012 c 210 s 2; 2004 c 31 s 2; 2003 c 165 s 1; 1995 c 403 s 302; 1994 c 249 s 14; 1992 c 197 s 8; 1989 c 175 s 7; 1988 c 288 s 303; 1982 c 221 s 2; 1982 c 6 s 7; 1980 c 186 s 10; 1977 ex.s. c 84 s 1. Formerly RCW 34.04.045.]

Application—1995 c 403 ss 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1980 c 186: "If any provision of this 1980 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 186 s 29.]

Expedited adoption: RCW 34.05.353.

Small business economic impact statement—Purpose—Contents: RCW 19.85.040.

RCW 34.05.322 Scope of rule-making authority. For rules implementing statutes enacted after July 23, 1995, an agency may not rely solely on the section of law stating a statute's intent or purpose, or on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for its statutory authority to adopt the rule. An agency may use the statement of intent or purpose or the agency enabling provisions to interpret ambiguities in a statute's other provisions. [1995 c 403 s 118.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

RCW 34.05.325 Public participation—Concise explanatory statement. (1) The agency shall make a good faith effort to insure that the information on the proposed rule published pursuant to RCW 34.05.320 accurately reflects the rule to be presented and considered at the oral hearing on the rule. Written comment about a proposed rule, including supporting data, shall be accepted by an agency if received no later than the time and date specified in the notice, or such later time and date established at the rule-making hearing.

(2) The agency shall provide an opportunity for oral comment to be received by the agency in a rule-making hearing.

(3) If the agency possesses equipment capable of receiving telefacsimile transmissions or recorded telephonic communications, the agency may provide in its notice of hearing filed under RCW 34.05.320 that interested parties may comment on proposed rules by these means. If the agency chooses to receive comments by these means, the notice of hearing shall provide instructions for making such comments, including, but not limited to, appropriate telephone numbers to be used; the date and time by which comments must be received; required methods to verify the receipt and authenticity of the comments; and any limitations on the number of pages for telefacsimile transmission comments and on the minutes of tape recorded comments. The agency shall accept comments received by these means for inclusion in the official record if the comments are made in accordance with the agency's instructions.

(4) The agency head, a member of the agency head, or a presiding officer designated by the agency head shall preside at the rule-making hearing. Rule-making hearings shall be open to the public. The agency shall cause a record to be made of the hearing by stenographic, mechanical, or electronic means. Regardless of whether the agency head has delegated rule-making authority, the presiding official shall prepare a memorandum for consideration by the agency head, summarizing the contents of the presentations made at the rule-making hearing, unless the agency head presided or was present at substantially all of the hearings. The summarizing memorandum is a public document and shall be made available to any person in accordance with chapter 42.56 RCW.

(5) Rule-making hearings are legislative in character and shall be reasonably conducted by the presiding official to afford interested persons the opportunity to present comment individually. All comments by all persons shall be made in the presence and hearing of other attendees. Written or electronic submissions may be accepted and included in the record. Rule-making hearings may be continued to a later time and place established on the record without publication of further notice under RCW 34.05.320.

(6)(a) Before it files an adopted rule with the code reviser, an agency shall prepare a concise explanatory statement of the rule:

(i) Identifying the agency's reasons for adopting the rule;

(ii) Describing differences between the text of the proposed rule as published in the register and the text of the rule as adopted, other than editing changes, stating the reasons for differences; and

(iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

(b) The agency shall provide the concise explanatory statement to any person upon request or from whom the agency received comment. [2009 c 336 s 1; 2005 c 274 s 262; 1998 c 125 s 1; 1995 c 403 s 304; 1994 c 249 s 7; 1992 c 57 s 1; 1988 c 288 s 304.]

Application—1995 c 403 ss 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

RCW 34.05.328 Significant legislative rules, other selected rules. (1) Before adopting a rule described in subsection (5) of this section, an agency must:

(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

(c) Provide notification in the notice of proposed rule making under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice must include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis must be available when the rule is adopted under RCW 34.05.360;

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

(f) Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law;

(g) Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law;

(h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

(i) A state statute that explicitly allows the agency to differ from federal standards; or

(ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and

(i) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

(2) In making its determinations pursuant to subsection (1)(b) through (h) of this section, the agency must place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified.

(3) Before adopting rules described in subsection (5) of this section, an agency must place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan must describe how the agency intends to:

(a) Implement and enforce the rule, including a description of the resources the agency intends to use;

(b) Inform and educate affected persons about the rule;

(c) Promote and assist voluntary compliance; and

(d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

(4) After adopting a rule described in subsection (5) of this section regulating the same activity or subject matter as another provision of federal or state law, an agency must do all of the following:

(a) Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to do one or more of the following:

(i) Deferring to the other entity;

(ii) Designating a lead agency; or

(iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to comply with this subsection (4)(a), the agency must report to the legislature pursuant to (b) of this subsection;

(b) Report to the joint administrative rules review committee:

(i) The existence of any overlap or duplication of other federal or state laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws; and

(ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

(5)(a) Except as provided in (b) of this subsection, this section applies to:

(i) Significant legislative rules of the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the insurance commissioner, the state building code council, and to the legislative rules of the department of fish and wildlife implementing chapter 77.55 RCW; and

(ii) Any rule of any agency, if this section is voluntarily made applicable to the rule by the agency, or is made applicable to the rule by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320.

(b) This section does not apply to:

(i) Emergency rules adopted under RCW 34.05.350;

(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(iii) Rules adopting or incorporating 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;

(iv) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(v) Rules the content of which is explicitly and specifically dictated by statute, including any rules of the department of revenue adopted under the authority of RCW 82.32.762(3);

(vi) Rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045;

(vii) 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; or

(viii) Rules of the department of revenue that adopt a uniform expiration date for reseller permits as authorized in RCW 82.32.780 and 82.32.783.

(c) For purposes of this subsection:

(i) A "procedural rule" is a rule that adopts, amends, or repeals (A) any procedure, practice, or requirement relating to any agency hearings; (B) any filing or related process requirement for making application to an agency for a license or permit; or (C) any policy statement pertaining to the consistent internal operations of an agency.

(ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.

(iii) A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

(d) In the notice of proposed rule making under RCW 34.05.320, an agency must state whether this section applies to the proposed rule pursuant to (a)(i) of this subsection, or if the agency will apply this section voluntarily.

(6) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of regulatory assistance, after consulting with state agencies, counties, and cities, and business, labor, and environmental organizations, must report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report must document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

(e) The extent to which this section has improved the acceptability of state rules to those regulated; and

(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section. [2019 c 8 s 405; 2018 c 207 s 8. Prior: 2011 c 298 s 21; 2011 c 149 s 1; 2010 c 112 s 15; prior: 2003 c 165 s 2; 2003 c 39 s 13; 1997 c 430 s 1; 1995 c 403 s 201.]

Effective date—2019 c 8 ss 101, 104, 106, 201, 402-405, and 501: See note following RCW 82.02.250.

Existing rights and liability—Retroactive application—2019 c 8: See notes following RCW 82.02.250.

Effective date—2018 c 207 ss 1-8: See note following RCW 19.27.070.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 298: See notes following RCW 19.02.020.

Effective date—2011 c 149: See note following RCW 43.42.010.

Effective date—2010 c 112 ss 2, 3, 11, 12, and 15: See note following RCW 82.32.780.

Retroactive application—2010 c 112: See note following RCW 82.32.780.

Findings—Short title—Intent—1995 c 403: "(1) The legislature finds that:

(a) One of its fundamental responsibilities, to the benefit of all the citizens of the state, is the protection of public health and safety, including health and safety in the workplace, and the preservation of the extraordinary natural environment with which Washington is endowed;

(b) Essential to this mission is the delegation of authority to state agencies to implement the policies established by the legislature; and that the adoption of administrative rules by these agencies helps assure that these policies are clearly understood, fairly applied, and uniformly enforced;

(c) Despite its importance, Washington's regulatory system must not impose excessive, unreasonable, or unnecessary obligations; to do so serves only to discredit government, makes enforcement of essential regulations more difficult, and detrimentally affects the economy of the state and the well-being of our citizens.

(2) The legislature therefore enacts chapter 403, Laws of 1995, to be known as the regulatory reform act of 1995, to ensure that the citizens and environment of this state receive the highest level of protection, in an effective and efficient manner, without stifling legitimate activities and responsible economic growth. To that end, it is the intent of the legislature, in the adoption of chapter 403, Laws of 1995, that:

(a) Unless otherwise authorized, substantial policy decisions affecting the public be made by those directly accountable to the public, namely the legislature, and that state agencies not use their administrative authority to create or amend regulatory programs;

(b) When an agency is authorized to adopt rules imposing obligations on the public, that it do so responsibly: The rules it adopts should be justified and reasonable, with the agency having determined, based on common sense criteria established by the legislature, that the obligations imposed are truly in the public interest;

(c) Governments at all levels better coordinate their regulatory efforts to avoid confusing and frustrating the public with overlapping or contradictory requirements;

(d) The public respect the process whereby administrative rules are adopted, whether or not they agree with the result: Members of the public affected by administrative rules must have the opportunity for a meaningful role in their development; the bases for agency action must be legitimate and clearly articulated;

(e) Members of the public have adequate opportunity to challenge administrative rules with which they have legitimate concerns through meaningful review of the rule by the executive, the legislature, and the judiciary. While it is the intent of the legislature that upon judicial review of a rule, a court should not substitute its judgment for that of an administrative agency, the court should determine whether the agency decision making was rigorous and deliberative; whether the agency reached its result through a process of reason; and whether the agency took a hard look at the rule before its adoption;

(f) In order to achieve greater compliance with administrative rules at less cost, that a cooperative partnership exist between agencies and regulated parties that emphasizes education and assistance before the imposition of penalties; and

(g) Workplace safety and health in this state not be diminished, whether provided by constitution, by statute, or by rule." [1995 c 403 s 1.]

Application—1995 c 403 ss 201, 301-305, 401-405, and 801: "Sections 201, 301 through 305, 401 through 405, and 801 of this act shall apply to all rule making for which a statement of proposed rule making under RCW 34.05.320 is filed after July 23, 1995." [1995 c 403 s 1102.]

Expedited adoption: RCW 34.05.353.

RCW 34.05.330 Petition for adoption, amendment, repeal—Agency action—Appeal. (1) Any person may petition an agency requesting the adoption, amendment, or repeal of any rule. The office of financial management shall prescribe by rule the format for such petitions and the procedure for their submission, consideration, and disposition and provide a standard form that may be used to petition any agency. Within sixty days after submission of a petition, the agency shall either (a) deny the petition in writing, stating (i) its reasons for the denial, specifically addressing the concerns raised by the petitioner, and, where appropriate, (ii) the alternative means by which it will address the concerns raised by the petitioner, or (b) initiate rule-making proceedings in accordance with RCW 34.05.320.

(2) If an agency denies a petition to repeal or amend a rule submitted under subsection (1) of this section, and the petition alleges that the rule is not within the intent of the legislature or was not adopted in accordance with all applicable provisions of law, the person may petition for review of the rule by the joint administrative rules review committee under RCW 34.05.655.

(3) If an agency denies a petition to repeal or amend a rule submitted under subsection (1) of this section, the petitioner, within thirty days of the denial, may appeal the denial to the governor. The governor shall immediately file notice of the appeal with the code reviser for publication in the Washington state register. Within forty-five days after receiving the appeal, the governor shall either (a) deny the petition in writing, stating (i) his or her reasons for the denial, specifically addressing the concerns raised by the petitioner, and, (ii) where appropriate, the alternative means by which he or she will address the concerns raised by the petitioner; (b) for agencies listed in RCW 43.17.010, direct the agency to initiate rule-making proceedings in accordance with this chapter; or (c) for agencies not listed in RCW 43.17.010, recommend that the agency initiate rule-making proceedings in accordance with this chapter. The governor's response to the appeal shall be published in the Washington state register and copies shall be submitted to the chief clerk of the house of representatives and the secretary of the senate.

(4) In petitioning for repeal or amendment of a rule under this section, a person is encouraged to address, among other concerns:

(a) Whether the rule is authorized;

(b) Whether the rule is needed;

(c) Whether the rule conflicts with or duplicates other federal, state, or local laws;

(d) Whether alternatives to the rule exist that will serve the same purpose at less cost;

(e) Whether the rule applies differently to public and private entities;

(f) Whether the rule serves the purposes for which it was adopted;

(g) Whether the costs imposed by the rule are unreasonable;

(h) Whether the rule is clearly and simply stated;

(i) Whether the rule is different than a federal law applicable to the same activity or subject matter without adequate justification; and

(j) Whether the rule was adopted according to all applicable provisions of law.

(5) The department of commerce and the office of financial management shall coordinate efforts among agencies to inform the public about the existence of this rules review process.

(6) The office of financial management shall initiate the rule making required by subsection (1) of this section by September 1, 1995. [2023 c 470 s 2013; 1998 c 280 s 5; 1996 c 318 s 1; 1995 c 403 s 703; 1988 c 288 s 305; 1967 c 237 s 5; 1959 c 234 s 6. Formerly RCW 34.04.060.]

Explanatory statement—2023 c 470: See note following RCW 10.99.030.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

RCW 34.05.335 Withdrawal of proposal—Time and manner of adoption. (1) A proposed rule may be withdrawn by the proposing agency at any time before adoption. A withdrawn rule may not be adopted unless it is again proposed in accordance with RCW 34.05.320.

(2) Before adopting a rule, an agency shall consider the written and oral submissions, or any memorandum summarizing oral submissions.

(3) Rules not adopted and filed with the code reviser within one hundred eighty days after publication of the text as last proposed in the register shall be regarded as withdrawn. An agency may not thereafter adopt the proposed rule without refiling it in accordance with RCW 34.05.320. The code reviser shall give notice of the withdrawal in the register.

(4) An agency may not adopt a rule before the time established in the published notice, or such later time established on the record or by publication in the state register. [1989 c 175 s 8; 1988 c 288 s 306; 1980 c 186 s 11. Formerly RCW 34.04.048.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1980 c 186: See note following RCW 34.05.320.

RCW 34.05.340 Variance between proposed and final rule. (1) Unless it complies with subsection (3) of this section, an agency may not adopt a rule that is substantially different from the rule proposed in the published notice of proposed rule adoption or a supplemental notice in the proceeding. If an agency contemplates

making a substantial variance from a proposed rule described in a published notice, it may file a supplemental notice with the code reviser meeting the requirements of RCW 34.05.320 and reopen the proceedings for public comment on the proposed variance, or the agency may withdraw the proposed rule and commence a new rule-making proceeding to adopt a substantially different rule. If a new rule-making proceeding is commenced, relevant public comment received regarding the initial proposed rule shall be considered in the new proceeding.

(2) The following factors shall be considered in determining whether an adopted rule is substantially different from the proposed rule on which it is based:

(a) The extent to which a reasonable person affected by the adopted rule would have understood that the published proposed rule would affect his or her interests;

(b) The extent to which the subject of the adopted rule or the issues determined in it are substantially different from the subject or issues involved in the published proposed rule; and

(c) The extent to which the effects of the adopted rule differ from the effects of the published proposed rule.

(3) If the agency, without filing a supplemental notice under subsection (1) of this section, adopts a rule that varies in content from the proposed rule, the general subject matter of the adopted rule must remain the same as the proposed rule. The agency shall briefly describe any changes, other than editing changes, and the principal reasons for adopting the changes. The brief description shall be filed with the code reviser together with the order of adoption for publication in the state register. Within sixty days of publication of the adopted rule in the state register, any interested person may petition the agency to amend any portion of the adopted rule that is substantially different from the proposed rule. The petition shall briefly demonstrate how the adopted rule is substantially different from the proposed rule and shall contain the text of the petitioner's proposed amendment. For purposes of the petition, an adopted rule is substantially different if the issues determined in the adopted rule differ from the issues determined in the proposed rule or the anticipated effects of the adopted rule differ from those of the proposed rule. If the petition meets the requirements of this subsection and RCW 34.05.330, the agency shall initiate rule-making proceedings upon the proposed amendments within the time provided in RCW 34.05.330. [1989 c 175 s 9; 1988 c 288 s 307.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.345 Failure to give twenty days notice of intended action—Effect. Except for emergency rules adopted under RCW 34.05.350, when twenty days notice of intended action to adopt, amend, or repeal a rule has not been published in the state register, as required by RCW 34.05.320, the code reviser shall not publish such rule and such rule shall not be effective for any purpose. [1988 c 288 s 308; 1967 c 237 s 4. Formerly RCW 34.04.027.]

RCW 34.05.350 Emergency rules and amendments. (1) If an agency for good cause finds:

(a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest;

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or

(c) In order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, 2013, or in an omnibus transportation appropriations act for the 2021-2023 biennium related to setting toll rates or ferry fares, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency,

the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

(2) An emergency rule adopted under this section takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing. Identical or substantially similar emergency rules may not be adopted in sequence unless conditions have changed or the agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. This section does not relieve any agency from compliance with any law requiring that its permanent rules be approved by designated persons or bodies before they become effective.

(3) Within seven days after the rule is adopted, any person may petition the governor requesting the immediate repeal of a rule adopted on an emergency basis by any department listed in RCW 43.17.010. Within seven days after submission of the petition, the governor shall either deny the petition in writing, stating his or her reasons for the denial, or order the immediate repeal of the rule. In ruling on the petition, the governor shall consider only whether the conditions in subsection (1) of this section were met such that adoption of the rule on an emergency basis was necessary. If the governor orders the repeal of the emergency rule, any sanction imposed based on that rule is void. This subsection shall not be construed to prohibit adoption of any rule as a permanent rule. [2021 c 333 s 717; 2011 1st sp.s. c 2 s 1; 2009 c 559 s 1; 1994 c 249 s 3; 1989 c 175 s 10; 1988 c 288 s 309; 1981 c 324 s 4; 1977 ex.s. c 240 s 8; 1959 c 234 s 3. Formerly RCW 34.04.030.]

Effective date—2021 c 333: See note following RCW 43.19.642.

Effective date—2011 1st sp.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 31, 2011]." [2011 1st sp.s. c 2 s 2.]

Effective date—2009 c 559: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 559 s 2.]

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1989 c 175: See note following RCW 34.05.010.

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

Effective date—1977 ex.s. c 240: See RCW 34.08.905.

RCW 34.05.353 Expedited rule making. (1) An agency may file notice for the expedited adoption of rules in accordance with the procedures set forth in this section for rules meeting any one of the following criteria:

(a) The proposed rules relate only to internal governmental operations that are not subject to violation by a person;

(b) The proposed rules adopt or incorporate 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;

(c) The proposed rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect, including a proposed rule described in subsection (9) of this section;

(d) The content of the proposed rules is explicitly and specifically dictated by statute;

(e) The proposed rules 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

(f) The proposed rule is being amended after a review under RCW 34.05.328.

(2) An agency may file notice for the expedited repeal of rules under the procedures set forth in this section for rules meeting any one of the following criteria:

(a) 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;

(b) 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;

(c) The rule is no longer necessary because of changed circumstances; or

(d) Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

(3) The expedited rule-making process must follow the requirements for rule making set forth in RCW 34.05.320, except that the agency is not required to prepare a small business economic impact statement under RCW 19.85.025, a statement indicating whether the rule constitutes a significant legislative rule under RCW 34.05.328(5)(c)(iii), or a significant legislative rule analysis under RCW 34.05.328. An agency is not required to prepare statements of inquiry under RCW 34.05.310 or conduct a hearing for the expedited rule making. The notice for the expedited rule making must contain a statement in at least ten-point type, that is substantially in the following form:

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 (INSERT NAME AND ADDRESS) AND RECEIVED BY (INSERT DATE).

(4) The agency shall send either a copy of the notice of the proposed expedited rule making, or a summary of the information on the notice, to any person who has requested notification of proposals for expedited rule making or of regular agency rule making, as well as the joint administrative rules review committee, within three days after its publication in the Washington State Register. An agency may charge for the actual cost of providing a requesting party mailed copies of these notices. The notice of the proposed expedited rule making must be preceded by a statement substantially in the form provided in subsection (3) of this section. The notice must also include an explanation of the reasons the agency believes the expedited rule-making process is appropriate.

(5) The code reviser shall publish the text of all rules proposed for expedited adoption, and the citation and caption of all rules proposed for expedited repeal, along with the notice required in this section in a separate section of the Washington State Register. Once the notice of expedited rule making has been published in the Washington State Register, the only changes that an agency may make in the noticed materials before their final adoption or repeal are to correct typographical errors.

(6) Any person may file a written objection to the expedited rule making. The objection must be filed with the agency rules coordinator within forty-five days after the notice of the proposed expedited rule making has been published in the Washington State Register. A person who has filed a written objection to the expedited rule making may withdraw the objection.

(7) Except as provided in subsection (9) of this section, if no written objections to the expedited rule making are filed with the agency within forty-five days after the notice of proposed expedited rule making is published, or if all objections that have been filed are withdrawn by the persons filing the objections, the agency may enter an order adopting or repealing the rule without further notice or a public hearing. The order must be published in the manner required by this chapter for any other agency order adopting, amending, or repealing a rule.

(8) Except as provided in subsection (9) of this section, if a written notice of objection to the expedited rule making is timely filed with the agency and is not withdrawn, the notice of proposed expedited rule making published under this section is considered a statement of inquiry for the purposes of RCW 34.05.310, and the agency may initiate further rule-making proceedings in accordance with this chapter.

(9) The proposed rules which may be filed under subsection (1)(d) [(1)(c)] of this section include any proposed rule which, pursuant to RCW 1.20.130(2), only substitutes the term "alien," when used to refer to an individual who is not a citizen or national of the United States, with the term "noncitizen" or other context-appropriate term and which makes necessary grammatical changes and definitions resulting from the substitution, but does not change the effect of a rule. Written objections to a proposed rule meeting the criteria in this subsection may be filed as described in subsection (6) of this section, however an agency may proceed with entering an order under subsection (7) of this section notwithstanding objections.

(10) As used in this section, "expedited rule making" includes both the expedited adoption of rules and the expedited repeal of rules. [2026 c 36 s 43; 2004 c 31 s 4; 2001 c 25 s 2.]

RCW 34.05.360 Order adopting rule, contents. The order of adoption by which each rule is adopted by an agency shall contain all of the following:

(1) The date the agency adopted the rule;

(2) A concise statement of the purpose of the rule;

(3) A reference to all rules repealed, amended, or suspended by the rule;

(4) A reference to the specific statutory or other authority authorizing adoption of the rule;

(5) Any findings required by any provision of law as a precondition to adoption or effectiveness of the rule; and

(6) The effective date of the rule if other than that specified in RCW 34.05.380(2). [1988 c 288 s 311.]

RCW 34.05.362 Postadoption notice. Either before or within two hundred days after the effective date of an adopted rule that imposes additional requirements on businesses the violation of which subjects the business to a penalty, assessment, or administrative sanction, an agency identified in RCW 34.05.220(6) shall notify businesses affected by the rule of the requirements of the rule and how to obtain technical assistance to comply. Notification must be provided by email, if possible, to every person identified to receive the postadoption notice under RCW 34.05.220(6).

The notification must announce the rule change, briefly summarize the rule change, refer to appeal procedures under RCW 34.05.330, and include a contact for more information. Failure to notify a specific business under this section does not invalidate a rule or waive the requirement to comply with the rule. The requirements of this section do not apply to emergency rules adopted under RCW 34.05.350. [2003 c 246 s 3.]

Finding—2003 c 246: "The legislature finds that many businesses in the state are frustrated by the complexity of the regulatory system. The Washington Administrative Code containing agency rules now fills twelve volumes, and appears to be growing each year. While the vast majority of businesses make a good faith attempt to comply with applicable laws and rules, many find it extremely difficult to keep up with agencies' issuance of new rules and requirements. Therefore, state agencies are directed to make a good faith attempt to notify businesses affected by rule changes that may subject noncomplying businesses to penalties." [2003 c 246 s 1.]

RCW 34.05.365 Incorporation by reference. An agency may incorporate by reference and without publishing the incorporated matter in full, all or any part of a code, standard, rule, or regulation that has been adopted by an agency of the United States, of this state, or of another state, by a political subdivision of this state, or by a generally recognized organization or association if incorporation of the full text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in agency rules shall fully identify the incorporated matter. An agency may incorporate by reference such matter in its rules only if the agency, organization, or association originally issuing that matter makes copies readily available to the public. The incorporating agency shall have, maintain, and make available for public inspection a copy of the incorporated matter. The rule must state where copies of the incorporated matter are available. [1988 c 288 s 312.]

RCW 34.05.370 Rule-making file. (1) Each agency shall maintain an official rule-making file for each rule that it (a) proposes by publication in the state register, or (b) adopts. The file and materials incorporated by reference shall be available for public inspection.

(2) The agency rule-making file shall contain all of the following:

(a) A list of citations to all notices in the state register with respect to the rule or the proceeding upon which the rule is based;

(b) Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding on which the rule is based;

(c) All written petitions, requests, submissions, and comments received by the agency and all other written material regarded by the agency as important to adoption of the rule or the proceeding on which the rule is based;

(d) Any official transcript of oral presentations made in the proceeding on which the rule is based or, if not transcribed, any tape recording or stenographic record of them, and any memorandum prepared by a presiding official summarizing the contents of those presentations;

(e) All petitions for exceptions to, amendment of, or repeal or suspension of, the rule;

(f) Citations to data, factual information, studies, or reports on which the agency relies in the adoption of the rule, indicating where such data, factual information, studies, or reports are available for review by the public, but this subsection (2)(f) does

not require the agency to include in the rule-making file any data, factual information, studies, or reports gathered pursuant to chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(g) The concise explanatory statement required by RCW 34.05.325(6); and

(h) Any other material placed in the file by the agency.

(3) Internal agency documents are exempt from inclusion in the rule-making file under subsection (2) of this section to the extent they constitute preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific document is not exempt from inclusion when it is publicly cited by an agency in connection with its decision.

(4) Upon judicial review, the file required by this section constitutes the official agency rule-making file with respect to that rule. Unless otherwise required by another provision of law, the official agency rule-making file need not be the exclusive basis for agency action on that rule. [1998 c 280 s 7; 1996 c 102 s 2; 1995 c 403 s 801; 1994 c 249 s 2; 1988 c 288 s 313.]

Application—1995 c 403 ss 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

RCW 34.05.375 Substantial compliance with procedures. No rule proposed after July 1, 1989, is valid unless it is adopted in substantial compliance with RCW 34.05.310 through 34.05.395. Inadvertent failure to mail notice of a proposed rule adoption to any person as required by RCW 34.05.320(3) does not invalidate a rule. No action based upon this section may be maintained to contest the validity of any rule unless it is commenced within two years after the effective date of the rule. [1988 c 288 s 314.]

RCW 34.05.380 Filing with code reviser—Written record—Effective dates. (1) Each agency shall file in the office of the code reviser a certified copy of all rules it adopts, except for rules contained in tariffs filed with or published by the Washington utilities and transportation commission. The code reviser shall place upon each rule a notation of the time and date of filing and shall keep a permanent written record of filed rules open to public inspection. In filing a rule, each agency shall use the standard form prescribed for this purpose by the code reviser.

(2) Emergency rules adopted under RCW 34.05.350 become effective upon filing unless a later date is specified in the order of adoption. All other rules become effective upon the expiration of thirty days after the date of filing, unless a later date is required by statute or specified in the order of adoption.

(3) A rule may become effective immediately upon its filing with the code reviser or on any subsequent date earlier than that established by subsection (2) of this section, if the agency establishes that effective date in the adopting order and finds that:

(a) Such action is required by the state or federal Constitution, a statute, or court order;

(b) The rule only delays the effective date of another rule that is not yet effective; or

(c) The earlier effective date is necessary because of imminent peril to the public health, safety, or welfare.

The finding and a brief statement of the reasons therefor required by this subsection shall be made a part of the order adopting the rule.

(4) With respect to a rule made effective pursuant to subsection (3) of this section, each agency shall make reasonable efforts to make the effective date known to persons who may be affected by it. [2007 c 456 s 5; 1989 c 175 s 11; 1988 c 288 s 315; 1987 c 505 s 17; 1980 c 87 s 11; 1959 c 234 s 4. Formerly RCW 34.04.040.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.385 Rules for rule making. The code reviser may adopt rules for carrying out the provisions of this chapter relating to the filing and publication of rules and notices of intention to adopt rules, including the form and style to be employed by the various agencies in the drafting of such rules and notices. [1988 c 288 s 316; 1967 c 237 s 13. Formerly RCW 34.04.055.]

RCW 34.05.390 Style, format, and numbering—Agency compliance. After the rules of an agency have been published by the code reviser:

(1) All agency orders amending or rescinding such rules, or creating new rules, shall be formulated in accordance with the style, format, and numbering system of the Washington Administrative Code;

(2) Any subsequent printing or reprinting of such rules shall be printed in the style and format (including the numbering system) of such code; and

(3) Amendments of previously adopted rules shall incorporate any editorial corrections made by the code reviser. [1988 c 288 s 317; 1967 c 237 s 14. Formerly RCW 34.04.057.]

RCW 34.05.395 Format and style of amendatory and new sections—Failure to comply. (1) Rules proposed or adopted by an agency pursuant to this chapter that amend existing sections of the administrative code shall have the words which are amendatory to such existing sections underlined. Any matter to be deleted from an existing section shall be indicated by setting such matter forth in full, enclosed by double parentheses, and such deleted matter shall be lined out with hyphens. A new section shall be designated "NEW SECTION" in upper case type and such designation shall be underlined, but the complete text of the section shall not be underlined. No rule may be forwarded by any agency to the code reviser, nor may the code reviser accept for filing any rule unless the format of such rule is in compliance with the provisions of this section.

(2) Once the rule has been formally adopted by the agency the code reviser need not, except with regard to the register published pursuant to RCW 34.05.210(3), include the items enumerated in subsection (1) of this section in the official code.

(3) Any addition to or deletion from an existing code section not filed by the agency in the style prescribed by subsection (1) of this section shall in all respects be ineffectual, and shall not be shown in subsequent publications or codifications of that section unless the ineffectual portion of the rule is clearly distinguished and an explanatory note is appended thereto by the code reviser in accordance with RCW 34.05.210. [1988 c 288 s 318; 1980 c 186 s 14; 1977 c 19 s 1. Formerly RCW 34.04.058.]

Severability—1980 c 186: See note following RCW 34.05.320.

PART IV
ADJUDICATIVE PROCEEDINGS

RCW 34.05.410 Application of Part IV. (1) Adjudicative proceedings are governed by RCW 34.05.413 through 34.05.476, except as otherwise provided:

(a) By a rule that adopts the procedures for brief adjudicative proceedings in accordance with the standards provided in RCW 34.05.482 for those proceedings;

(b) By RCW 34.05.479 pertaining to emergency adjudicative proceedings; or

(c) By RCW 34.05.240 pertaining to declaratory proceedings.

(2) RCW 34.05.410 through 34.05.494 do not apply to rule-making proceedings unless another statute expressly so requires. [1988 c 288 s 401.]

RCW 34.05.413 Commencement—When required. (1) Within the scope of its authority, an agency may commence an adjudicative proceeding at any time with respect to a matter within the agency's jurisdiction.

(2) When required by law or constitutional right, and upon the timely application of any person, an agency shall commence an adjudicative proceeding.

(3) An agency may provide forms for and, by rule, may provide procedures for filing an application for an adjudicative proceeding. An agency may require by rule that an application be in writing and that it be filed at a specific address, in a specified manner, and within specified time limits. The agency shall allow at least twenty days to apply for an adjudicative proceeding from the time notice is given of the opportunity to file such an application.

(4) If an agency is required to hold an adjudicative proceeding, an application for an agency to enter an order includes an application for the agency to conduct appropriate adjudicative proceedings, whether or not the applicant expressly requests those proceedings.

(5) An adjudicative proceeding commences when the agency or a presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted. [1989 c 175 s 12; 1988 c 288 s 402.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.416 Decision not to conduct an adjudication. If an agency decides not to conduct an adjudicative proceeding in response to an application, the agency shall furnish the applicant a copy of its decision in writing, with a brief statement of the agency's reasons and of any administrative review available to the applicant. [1988 c 288 s 403.]

RCW 34.05.419 Agency action on applications for adjudication. After receipt of an application for an adjudicative proceeding, other than a declaratory order, an agency shall proceed as follows:

(1) Except in situations governed by subsection (2) or (3) of this section, within ninety days after receipt of the application or of the response to a timely request made by the agency under subsection (2) of this section, the agency shall do one of the following:

(a) Approve or deny the application, in whole or in part, on the basis of brief or emergency adjudicative proceedings, if those proceedings are available under this chapter for disposition of the matter;

(b) Commence an adjudicative proceeding in accordance with this chapter; or

(c) Dispose of the application in accordance with RCW 34.05.416;

(2) Within thirty days after receipt of the application, the agency shall examine the application, notify the applicant of any obvious errors or omissions, request any additional information the agency wishes to obtain and is permitted by law to require, and notify the applicant of the name, mailing address, and telephone number of an office that may be contacted regarding the application;

(3) If the application seeks relief that is not available when the application is filed but may be available in the future, the agency may proceed to make a determination of eligibility within the time limits provided in subsection (1) of this section. If the agency determines that the applicant is eligible, the agency shall maintain the application on the agency's list of eligible applicants as provided by law and, upon request, shall notify the applicant of the status of the application. [1988 c 288 s 404.]

RCW 34.05.422 Rate changes, licenses. (1) Unless otherwise provided by law: (a) Applications for rate changes and uncontested applications for licenses may, in the agency's discretion, be conducted as adjudicative proceedings; (b) applications for licenses that are contested by a person having standing to contest under the law and review of denials of applications for licenses or rate changes must be conducted as adjudicative proceedings; and (c) an agency may not revoke, suspend, or modify a license unless the agency gives notice of an opportunity for an appropriate adjudicative proceeding in accordance with this chapter or other statute.

(2) An agency with authority to grant or deny a professional or occupational license must notify an applicant for a new or renewal license not later than twenty days prior to the date of the examination required for that license of any grounds for denial of the

license which are based on specific information disclosed in the application submitted to the agency. The agency must notify the applicant either that the license is denied or that the decision to grant or deny the license will be made at a future date. If the agency fails to give the notification prior to the examination and the applicant is denied licensure, the examination fee must be refunded to the applicant. If the applicant takes the examination, the agency must notify the applicant of the result.

(3) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, an existing full, temporary, or provisional license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(4) If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings must be promptly instituted and determined.

(5) This section does not apply to requests made by the department of revenue, under the authority of RCW 82.08.155, to the *liquor control board to suspend a person's spirits license and to refuse to renew any spirits license held by the person and to issue any new spirits license to the person. [2012 c 39 s 6; 1989 c 175 s 13; 1988 c 288 s 405; 1980 c 33 s 1; 1967 c 237 s 8. Formerly RCW 34.04.170.]

***Reviser's note:** The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 s 3.

Construction—Effective date—2012 c 39: See notes following RCW 82.08.155.

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.425 Presiding officers—Disqualification, substitution. (1) Except as provided in subsection (2) of this section, in the discretion of the agency head, the presiding officer in an administrative hearing shall be:

(a) The agency head or one or more members of the agency head;

(b) If the agency has statutory authority to do so, a person other than the agency head or an administrative law judge designated by the agency head to make the final decision and enter the final order;

(c) One or more administrative law judges assigned by the office of administrative hearings in accordance with chapter 34.12 RCW; or

(d) A person or persons designated by the secretary of health pursuant to RCW 43.70.740.

(2) An agency expressly exempted under RCW 34.12.020(4) or other statute from the provisions of chapter 34.12 RCW or an institution of higher education shall designate a presiding officer as provided by rules adopted by the agency.

(3) Any individual serving or designated to serve alone or with others as presiding officer is subject to disqualification for bias,

prejudice, interest, or any other cause provided in this chapter or for which a judge is disqualified.

(4) Any party may petition for the disqualification of an individual promptly after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification.

(5) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(6) When the presiding officer is an administrative law judge, the provisions of this section regarding disqualification for cause are in addition to the motion of prejudice available under RCW 34.12.050.

(7) If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute must be appointed by the appropriate appointing authority.

(8) Any action taken by a duly appointed substitute for an unavailable individual is as effective as if taken by the unavailable individual. [2013 c 109 s 4; 1989 c 175 s 14; 1988 c 288 s 406.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.428 Representation. (1) A party to an adjudicative proceeding may participate personally or, if the party is a corporation or other artificial person, by a duly authorized representative.

(2) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, if permitted by provision of law, other representative. [1989 c 175 s 15; 1988 c 288 s 407.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.431 Conference—Procedure and participation. (1) Agencies may hold prehearing or other conferences for the settlement or simplification of issues. Every agency shall by rule describe the conditions under which and the manner in which conferences are to be held.

(2) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the conference may be conducted by telephone, television, or other electronic means. Each participant in the conference must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place. [1988 c 288 s 408.]

RCW 34.05.434 Notice of hearing. (1) The agency or the office of administrative hearings shall set the time and place of the hearing and give not less than seven days advance written notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(2) The notice shall include:

(a) Unless otherwise ordered by the presiding officer, the names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(b) If the agency intends to appear, the mailing address and telephone number of the office designated to represent the agency in the proceeding;

(c) The official file or other reference number and the name of the proceeding;

(d) The name, official title, mailing address, and telephone number of the presiding officer, if known;

(e) A statement of the time, place and nature of the proceeding;

(f) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(g) A reference to the particular sections of the statutes and rules involved;

(h) A short and plain statement of the matters asserted by the agency; and

(i) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with this chapter.

(3) If the agency is unable to state the matters required by subsection (2)(h) of this section at the time the notice is served, the initial notice may be limited to a statement of the issues involved. If the proceeding is initiated by a person other than the agency, the initial notice may be limited to the inclusion of a copy of the initiating document. Thereafter, upon request, a more definite and detailed statement shall be furnished.

(4) The notice may include any other matters considered desirable by the agency.

(5) The notice may be served on a party via electronic distribution, with a party's agreement. [2013 c 110 s 1; 1988 c 288 s 409; 1980 c 31 s 1; 1967 c 237 s 9; 1959 c 234 s 9. Formerly RCW 34.04.090.]

RCW 34.05.437 Pleadings, briefs, motions, service. (1) The presiding officer, at appropriate stages of the proceedings, shall give all parties full opportunity to submit and respond to pleadings, motions, objections, and offers of settlement.

(2) At appropriate stages of the proceedings, the presiding officer may give all parties full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial or final orders.

(3) A party that files a pleading, brief, or other paper with the agency or presiding officer shall serve copies on all other parties, unless a different procedure is specified by agency rule. [1988 c 288 s 410.]

RCW 34.05.440 Default. (1) Failure of a party to file an application for an adjudicative proceeding within the time limit or limits established by statute or agency rule constitutes a default and results in the loss of that party's right to an adjudicative proceeding, and the agency may proceed to resolve the case without further notice to, or hearing for the benefit of, that party, except that any default or other dispositive order affecting that party shall be served upon him or her or upon his or her attorney, if any.

(2) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, other than failing to timely request an adjudicative proceeding as set out in subsection (1) of this section, the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.

(3) Within seven days after service of a default order under subsection (2) of this section, or such longer period as provided by agency rule, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. [1989 c 175 s 16; 1988 c 288 s 411.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.443 Intervention. (1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(2) If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; and

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(3) The presiding officer shall timely grant or deny each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of the decision granting, denying, or modifying intervention to the petitioner for intervention and to all parties. [1988 c 288 s 412.]

RCW 34.05.446 Subpoenas, discovery, and protective orders. (1) The presiding officer may issue subpoenas and may enter protective orders. A subpoena may be issued with like effect by the agency or the attorney of record in whose behalf the witness is required to appear.

(2) An agency may by rule determine whether or not discovery is to be available in adjudicative proceedings and, if so, which forms of discovery may be used.

(3) Except as otherwise provided by agency rules, the presiding officer may decide whether to permit the taking of depositions, the

requesting of admissions, and all other procedures authorized by rules 26 through 36 of the superior court civil rules. The presiding officer may condition use of discovery on a showing of necessity and unavailability by other means. In exercising such discretion, the presiding officer shall consider: (a) Whether all parties are represented by counsel; (b) whether undue expense or delay in bringing the case to hearing will result; (c) whether the discovery will promote the orderly and prompt conduct of the proceeding; and (d) whether the interests of justice will be promoted.

(4) Discovery orders and protective orders entered under this section may be enforced under the provisions of this chapter on civil enforcement of agency action.

(5) Subpoenas issued under this section may be enforced under RCW 34.05.588(1).

(6) The subpoena powers created by this section shall be statewide in effect.

(7) Witnesses in an adjudicatory proceeding shall be paid the same fees and allowances, in the same manner and under the same conditions, as provided for witnesses in the courts of this state by chapter 2.40 RCW and by RCW 5.56.010, except that the agency shall have the power to fix the allowance for meals and lodging in like manner as is provided in RCW 5.56.010 as to courts. The person initiating an adjudicative proceeding or the party requesting issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena. [1989 c 175 s 17; 1988 c 288 s 413; 1967 c 237 s 10. Formerly RCW 34.04.105.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.449 Procedure at hearing. (1) The presiding officer shall regulate the course of the proceedings, in conformity with applicable rules and the prehearing order, if any.

(2) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.

(3) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing may be conducted by telephone, television, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place.

(4) The presiding officer shall cause the hearing to be recorded by a method chosen by the agency. The agency is not required, at its expense, to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.

(5) The hearing is open to public observation, except for the parts that the presiding officer states to be closed under a provision of law expressly authorizing closure or under a protective order

entered by the presiding officer pursuant to applicable rules. A presiding officer may order the exclusion of witnesses upon a showing of good cause. To the extent that the hearing is conducted by telephone, television, or other electronic means, and is not closed, the availability of public observation is satisfied by giving members of the public an opportunity, at reasonable times, to hear or inspect the agency's record, and to inspect any transcript obtained by the agency. [1989 c 175 s 18; 1988 c 288 s 414.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.452 Rules of evidence—Cross-examination. (1) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) If not inconsistent with subsection (1) of this section, the presiding officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings.

(3) All testimony of parties and witnesses shall be made under oath or affirmation.

(4) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(5) Official notice may be taken of (a) any judicially cognizable facts, (b) technical or scientific facts within the agency's specialized knowledge, and (c) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed. [1988 c 288 s 415; 1959 c 234 s 10. Formerly RCW 34.04.100.]

RCW 34.05.455 Ex parte communications. (1) [(a)] A presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding other than communications necessary to procedural aspects of maintaining an orderly process, with any person employed by the agency without notice and opportunity for all parties to participate, except as provided in this subsection:

(a) [(i)] Where the ultimate legal authority of an agency is vested in a multimember body, and where that body presides at an adjudication, members of the body may communicate with one another regarding the proceeding;

(b) [(ii)] Any presiding officer may receive aid from legal counsel, or from staff assistants who are subject to the presiding officer's supervision; and

(c) [(iii)] Presiding officers may communicate with other employees or consultants of the agency who have not participated in the proceeding in any manner, and who are not engaged in any investigative or prosecutorial functions in the same or a factually related case.

(d) [(b)] This subsection does not apply to communications required for the disposition of ex parte matters specifically authorized by statute.

(2) Unless required for the disposition of ex parte matters specifically authorized by statute or unless necessary to procedural aspects of maintaining an orderly process, a presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding, with any person not employed by the agency who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.

(3) Unless necessary to procedural aspects of maintaining an orderly process, persons to whom a presiding officer may not communicate under subsections (1) and (2) of this section may not communicate with presiding officers without notice and opportunity for all parties to participate.

(4) If, before serving as presiding officer in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (5) of this section.

(5) A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the presiding officer received an ex parte communication. The presiding officer shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record. Portions of the record pertaining to ex parte communications or rebuttal statements do not constitute evidence of any fact at issue in the matter unless a party moves the admission of any portion of the record for purposes of establishing a fact at issue and that portion is admitted pursuant to RCW 34.05.452.

(6) If necessary to eliminate the effect of an ex parte communication received in violation of this section, a presiding officer who receives the communication may be disqualified, and the portions of the record pertaining to the communication may be sealed by protective order.

(7) The agency shall, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule may provide for appropriate sanctions, including default, for any violations of this section. [1988 c 288 s 416.]

RCW 34.05.458 Separation of functions. (1) A person who has served as investigator, prosecutor, or advocate in an adjudicative proceeding or in its preadjudicative stage, or one who is subject to

the authority, direction, or discretion of such a person, may not serve as a presiding officer in the same proceeding.

(2) A person, including an agency head, who has participated in a determination of probable cause or other equivalent preliminary determination in an adjudicative proceeding may serve as presiding officer or assist or advise a presiding officer in the same proceeding unless a party demonstrates grounds for disqualification in accordance with RCW 34.05.425.

(3) A person may serve as presiding officer at successive stages of the same adjudicative proceeding unless a party demonstrates grounds for disqualification in accordance with RCW 34.05.425. [1988 c 288 s 417.]

RCW 34.05.461 Entry of orders. (1) Except as provided in subsection (2) of this section:

(a) If the presiding officer is the agency head or one or more members of the agency head, the presiding officer may enter an initial order if further review is available within the agency, or a final order if further review is not available;

(b) If the presiding officer is a person designated by the agency to make the final decision and enter the final order, the presiding officer shall enter a final order; and

(c) If the presiding officer is one or more administrative law judges, the presiding officer shall enter an initial order.

(2) With respect to agencies exempt from chapter 34.12 RCW or an institution of higher education, the presiding officer shall transmit a full and complete record of the proceedings, including such comments upon demeanor of witnesses as the presiding officer deems relevant, to each agency official who is to enter a final or initial order after considering the record and evidence so transmitted.

(3) Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction and, if applicable, the action taken on a petition for a stay of effectiveness. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified. Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(4) Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the presiding officer shall not base a finding exclusively on such inadmissible evidence unless the presiding officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order.

(5) Where it bears on the issues presented, the agency's experience, technical competency, and specialized knowledge may be used in the evaluation of evidence.

(6) If a person serving or designated to serve as presiding officer becomes unavailable for any reason before entry of the order, a substitute presiding officer shall be appointed as provided in RCW 34.05.425. The substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(7) The presiding officer may allow the parties a designated time after conclusion of the hearing for the submission of memos, briefs, or proposed findings.

(8)(a) Except as otherwise provided in (b) of this subsection, initial or final orders shall be served in writing within ninety days after conclusion of the hearing or after submission of memos, briefs, or proposed findings in accordance with subsection (7) of this section unless this period is waived or extended for good cause shown. The initial or final order may be served on a party via electronic distribution, with a party's agreement.

(b) This subsection does not apply to the final order of the shorelines hearings board on appeal under RCW 90.58.180(3).

(9) The presiding officer shall cause copies of the order to be served on each party and the agency. [2013 c 110 s 2; 1995 c 347 s 312; 1989 c 175 s 19; 1988 c 288 s 418.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.464 Review of initial orders. (1) As authorized by law, an agency may by rule provide that initial orders in specified classes of cases may become final without further agency action unless, within a specified period, (a) the agency head upon its own motion determines that the initial order should be reviewed, or (b) a party to the proceedings files a petition for administrative review of the initial order. Upon occurrence of either event, notice shall be given to all parties to the proceeding.

(2) As authorized by law, an agency head may appoint a person to review initial orders and to prepare and enter final agency orders.

(3) RCW 34.05.425 and 34.05.455 apply to any person reviewing an initial order on behalf of an agency as part of the decision process, and to persons communicating with them, to the same extent that it is applicable to presiding officers.

(4) The officer reviewing the initial order (including the agency head reviewing an initial order) is, for the purposes of this chapter, termed the reviewing officer. The reviewing officer shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the reviewing officer upon notice to all the parties. In reviewing findings of fact by presiding officers, the reviewing officers shall give due regard to the presiding officer's opportunity to observe the witnesses.

(5) The reviewing officer shall personally consider the whole record or such portions of it as may be cited by the parties.

(6) The reviewing officer shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument.

(7) The reviewing officer shall enter a final order disposing of the proceeding or remand the matter for further proceedings, with instructions to the presiding officer who entered the initial order. Upon remanding a matter, the reviewing officer shall order such temporary relief as is authorized and appropriate.

(8) A final order shall include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3).

(9) The reviewing officer shall cause copies of the final order or order remanding the matter for further proceedings to be served upon each party. [1989 c 175 s 20; 1988 c 288 s 419.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.467 Stay. A party may submit to the presiding or reviewing officer, as is appropriate to the stage of the proceeding, a petition for stay of effectiveness of a final order within ten days of its service unless otherwise provided by statute or stated in the final order. Disposition of the petition for stay shall be made by the presiding officer, reviewing officer, or agency head as provided by agency rule. Disposition may be made either before or after the effective date of the final order. Disposition denying a stay is not subject to judicial review. [1988 c 288 s 420.]

RCW 34.05.470 Reconsideration. (1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The place of filing and other procedures, if any, shall be specified by agency rule.

(2) No petition for reconsideration may stay the effectiveness of an order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the agency's procedural rules for reconsideration, if any, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either: (a) Dispose of the petition; or (b) serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this

section is not subject to judicial review. [1989 c 175 s 21; 1988 c 288 s 421.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.473 Effectiveness of orders. (1) Unless a later date is stated in an order or a stay is granted, an order is effective when entered, but:

(a) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the final order;

(b) A nonparty may not be required to comply with a final order unless the agency has made the final order available for public inspection and copying or the nonparty has actual knowledge of the final order;

(c) For purposes of determining time limits for further administrative procedure or for judicial review, the determinative date is the date of service of the order.

(2) Unless a later date is stated in the initial order or a stay is granted, the time when an initial order becomes a final order in accordance with RCW 34.05.461 is determined as follows:

(a) When the initial order is entered, if administrative review is unavailable; or

(b) When the agency head with such authority enters an order stating, after a petition for administrative review has been filed, that review will not be exercised.

(3) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with RCW 34.05.479. [1989 c 175 s 22; 1988 c 288 s 422.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.476 Agency record. (1) An agency shall maintain an official record of each adjudicative proceeding under this chapter.

(2) The agency record shall include:

(a) Notices of all proceedings;

(b) Any prehearing order;

(c) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

(f) Proffers of proof and objections and rulings thereon;

(g) Proposed findings, requested orders, and exceptions;

(h) The recording prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;

(i) Any final order, initial order, or order on reconsideration;

(j) Staff memoranda or data submitted to the presiding officer, unless prepared and submitted by personal assistants and not inconsistent with RCW 34.05.455; and

(k) Matters placed on the record after an ex parte communication.

(3) Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis

for agency action in adjudicative proceedings under this chapter and for judicial review of adjudicative proceedings. [1988 c 288 s 423.]

RCW 34.05.479 Emergency adjudicative proceedings. (1) Unless otherwise provided by law, an agency may use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action.

(2) The agency may take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency adjudication.

(3) The agency shall enter an order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's discretion, to justify the determination of an immediate danger and the agency's decision to take the specific action.

(4) The agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when entered.

(5) After entering an order under this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) The agency record consists of any documents regarding the matter that were considered or prepared by the agency. The agency shall maintain these documents as its official record.

(7) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency adjudicative proceedings or for judicial review thereof.

(8) This section shall not apply to agency action taken pursuant to a provision of law that expressly authorizes the agency to issue a cease and desist order. The agency may proceed, alternatively, under that independent authority. [1988 c 288 s 424.]

Designation of persons for emergency adjudications by utilities and transportation commission: RCW 80.01.060.

RCW 34.05.4791 Secure community transition facility—Proceeding concerning public safety measures. A petition brought pursuant to RCW 71.09.342(5) shall be heard under the provisions of RCW 34.05.479 except that the decision of the governor's designee shall be final and is not subject to judicial review. [2002 c 68 s 10.]

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

RCW 34.05.482 Brief adjudicative proceedings—Applicability. (1) An agency may use brief adjudicative proceedings if:

(a) The use of those proceedings in the circumstances does not violate any provision of law;

(b) The protection of the public interest does not require the agency to give notice and an opportunity to participate to persons other than the parties;

(c) The matter is entirely within one or more categories for which the agency by rule has adopted this section and RCW 34.05.485 through 34.05.494; and

(d) The issue and interests involved in the controversy do not warrant use of the procedures of RCW 34.05.413 through 34.05.479.

(2) Brief adjudicative proceedings are not authorized for public assistance and food stamp or benefit programs provided for in Title 74 RCW, including but not limited to public assistance as defined in *RCW 74.04.005(1). [1998 c 79 s 3; 1988 c 288 s 425.]

***Reviser's note:** RCW 74.04.005 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (1) to subsection (11).

RCW 34.05.485 Brief adjudicative proceedings—Procedure. (1) If not specifically prohibited by law, the following persons may be designated as the presiding officer of a brief adjudicative proceeding:

(a) The agency head;

(b) One or more members of the agency head;

(c) One or more administrative law judges; or

(d) One or more other persons designated by the agency head.

(2) Before taking action, the presiding officer shall give each party an opportunity to be informed of the agency's view of the matter and to explain the party's view of the matter.

(3) At the time any unfavorable action is taken the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available.

(4) The brief written statement is an initial order. If no review is taken of the initial order as authorized by RCW 34.05.488 and 34.05.491, the initial order shall be the final order. [1989 c 175 s 23; 1988 c 288 s 426.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.488 Brief proceedings—Administrative review—Applicability. Unless prohibited by any provision of law, an agency, on its own motion, may conduct administrative review of an order resulting from brief adjudicative proceedings. An agency shall conduct this review upon the written or oral request of a party if the agency receives the request within twenty-one days after service of the written statement required by RCW 34.05.485(3). [1989 c 175 s 24; 1988 c 288 s 427.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.491 Brief proceedings—Administrative review—Procedures. Unless otherwise provided by statute:

(1) If the parties have not requested review, the agency may review an order resulting from a brief adjudicative proceeding on its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order

without giving that party notice and an opportunity to explain that party's view of the matter.

(2) The reviewing officer may be any person who could have presided at the brief proceeding, but the reviewing officer must be one who is authorized to grant appropriate relief upon review.

(3) The reviewing officer shall give each party an opportunity to explain the party's view of the matter and shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing.

(4) The order on review must be in writing, must include a brief statement of the reasons for the decision, and must be entered within twenty days after the date of the initial order or of the request for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(5) A request for administrative review is deemed to have been denied if the agency does not make a disposition of the matter within twenty days after the request is submitted. [1988 c 288 s 428.]

RCW 34.05.494 Agency record in brief proceedings. (1) The agency record consists of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. The agency shall maintain these documents as its official record.

(2) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in brief adjudicative proceedings or for the judicial review of brief adjudicative proceedings. [1988 c 288 s 429.]

PART V
JUDICIAL REVIEW AND CIVIL ENFORCEMENT

RCW 34.05.510 Relationship between this chapter and other judicial review authority. This chapter establishes the exclusive means of judicial review of agency action, except:

(1) The provisions of this chapter for judicial review do not apply to litigation in which the sole issue is a claim for money damages or compensation and the agency whose action is at issue does not have statutory authority to determine the claim.

(2) Ancillary procedural matters before the reviewing court, including intervention, class actions, consolidation, joinder, severance, transfer, protective orders, and other relief from disclosure of privileged or confidential material, are governed, to the extent not inconsistent with this chapter, by court rule.

(3) To the extent that de novo review or jury trial review of agency action is expressly authorized by provision of law. [1988 c 288 s 501.]

RCW 34.05.514 Petition for review—Where filed. (1) Except as provided in subsections (2) through (4) of this section, proceedings for review under this chapter shall be instituted by paying the fee required under RCW 36.18.020 and filing a petition in the superior

court, at the petitioner's option, for (a) Thurston county, (b) the county of the petitioner's residence or principal place of business, or (c) in any county where the property owned by the petitioner and affected by the contested decision is located.

(2) For proceedings involving institutions of higher education, the petition shall be filed either in the county in which the principal office of the institution involved is located or in the county of an institution's campus if the action involves such campus.

(3) For proceedings conducted by the pollution control hearings board pursuant to chapter 43.21B RCW or as otherwise provided in RCW 90.03.210(2) involving decisions of the department of ecology on applications for changes or transfers of water rights that are the subject of a general adjudication of water rights that is being litigated actively under chapter 90.03 or 90.44 RCW, the petition must be filed with the superior court conducting the adjudication, to be consolidated by the court with the general adjudication. A party to the adjudication shall be a party to the appeal under this chapter only if the party files or is served with a petition for review to the extent required by this chapter.

(4) For proceedings involving appeals of examinations or evaluation exercises of the board of pilotage commissioners under chapter 88.16 RCW, the petition must be filed either in Thurston county or in the county in which the board maintains its principal office. [2017 c 52 s 12; 2008 c 128 s 16; 2001 c 220 s 3. Prior: 1995 c 347 s 113; 1995 c 292 s 9; 1994 c 257 s 23; 1988 c 288 s 502.]

Intent—Construction—Effective date—2001 c 220: See notes following RCW 43.21B.110.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Severability—1994 c 257: See note following RCW 36.70A.270.

RCW 34.05.518 Direct review by court of appeals. (1) The final decision of an administrative agency in an adjudicative proceeding under this chapter may be directly reviewed by the court of appeals either (a) upon certification by the superior court pursuant to subsection (2) of this section ; (b) if the final decision is from an environmental board as identified in RCW 43.21B.005 and the final decision relates to a clean energy project as defined in RCW 43.158.010, pursuant to subsection (3) of this section; or (c) if the final decision is from an environmental board identified in RCW 43.21B.005 and the final decision does not relate to a clean energy project as defined in RCW 43.158.010, pursuant to subsection (4) of this section. Transfer of a case pursuant to subsections (3) or (4) of this section does not require the filing of a motion for discretionary review with the court of appeals.

(2)(a) For direct review upon certification by the superior court, an application for direct review must be filed with the superior court within thirty days of the filing of the petition for review in superior court. The superior court may certify a case for direct review only if the judicial review is limited to the record of the agency proceeding and the court finds that:

(i) Fundamental and urgent issues affecting the future administrative process or the public interest are involved which require a prompt determination;

(ii) Delay in obtaining a final and prompt determination of such issues would be detrimental to any party or the public interest;

(iii) An appeal to the court of appeals would be likely regardless of the determination in superior court; and

(iv) The appellate court's determination in the proceeding would have significant precedential value.

(b) Procedures for certification shall be established by court rule.

(3)(a) For the appeal of a permit related to a clean energy project, as defined in RCW 43.158.010, that is the subject of a final adjudicative decision of an environmental board, as identified in RCW 43.21B.005, upon a motion filed by any party to the appeal, the superior court shall certify a case for transfer to the court of appeals upon a finding that:

(i) The judicial review can occur based upon the agency record developed before the administrative body without supplementing the record pursuant to RCW 34.05.562; or

(ii) The superior court has completed any necessary supplementation of the record pursuant to RCW 34.05.562.

(b) If the superior court certifies a final decision of an administrative agency in an adjudicative proceeding, the superior court shall transfer the matter to the court of appeals as a direct appeal.

(c) A party contesting a superior court decision granting or denying certification for direct review may file a motion for discretionary review with the court of appeals. Where a contesting party demonstrates that substantial prejudice would result from direct review by the court of appeals, the court of appeals may remand to [the] superior court.

(4)(a) The final adjudicative decision of an environmental board, as identified in RCW 43.21B.005, that does not relate to a clean energy project as defined in RCW 43.158.010, may be directly reviewed by the court of appeals upon certification by the superior court pursuant to this subsection. The superior court shall certify cases for transfer to the court of appeals upon finding that:

(i) All parties have consented to the transfer to the court of appeals and agreed that the judicial review can occur based upon the agency record developed before the administrative body without supplementing the record pursuant to RCW 34.05.562; or

(ii) One or more of the parties have not consented to the transfer, but the superior court finds that transfer would serve the interest of justice, would not cause substantial prejudice to any party, including any unrepresented party, and further finds that:

(A) The judicial review can occur based upon the agency record developed before the administrative body without supplementing the record pursuant to RCW 34.05.562; or

(B) The superior court has completed any necessary supplementation of the record pursuant to RCW 34.05.562, such that only issues of law remain for determination.

(b) If the superior court certifies a final decision of an administrative agency in an adjudicative proceeding, the superior court shall transfer the matter to the court of appeals as a direct appeal.

(c) A party contesting a superior court decision granting or denying certification for direct review may file a motion for discretionary review with the court of appeals. Where a contesting party demonstrates that substantial prejudice would result from direct review by the court of appeals, the court of appeals may remand to the superior court. [2024 c 347 s 2; (2024 c 347 s 1 expired July 1, 2026); 2021 c 305 s 5; 2010 c 211 s 15; 2003 c 393 s 16; 1995 c 382 s 5; 1988 c 288 s 503; 1980 c 76 s 1. Formerly RCW 34.04.133.]

Effective date—2024 c 347 s 2: "Section 2 of this act takes effect July 1, 2026." [2024 c 347 s 14.]

Expiration date—2024 c 347 s 1: "Section 1 of this act expires July 1, 2026." [2024 c 347 s 13.]

Effective date—2021 c 305 ss 5 and 6: "Sections 5 and 6 of this act take effect July 1, 2026." [2021 c 305 s 9.]

Expiration date—2021 c 305 ss 2 and 3: "Sections 2 and 3 of this act expire July 1, 2026." [2021 c 305 s 8.]

Effective date—2021 c 305: "Except for sections 5 and 6 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect 30 days after signed into law [June 13, 2021]." [2021 c 305 s 7.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

RCW 34.05.522 Refusal of review by court of appeals. The court of appeals may refuse to accept direct review of a case pursuant to RCW 34.05.518 if it finds that the case does not meet the applicable standard in *RCW 34.05.518 (2) or (5). The refusal to accept such review is not subject to further appellate review, notwithstanding anything in Rule 13.3 of the Rules of Appellate Procedure to the contrary. [2021 c 305 s 6; 1995 c 382 s 6; 1988 c 288 s 504; 1980 c 76 s 2. Formerly RCW 34.04.135.]

***Reviser's note:** RCW 34.05.518 was amended by 2024 c 347 s 2, deleting subsection (5).

Effective date—2021 c 305 ss 5 and 6: See note following RCW 34.05.518.

Expiration date—2021 c 305 ss 2 and 3: See note following RCW 34.05.518.

Effective date—2021 c 305: See note following RCW 34.05.518.

RCW 34.05.526 Appellate review by supreme court or court of appeals. An aggrieved party may secure appellate review of any final judgment of the superior court under this chapter by the supreme court or the court of appeals. The review shall be secured in the manner

provided by law for review of superior court decisions in other civil cases. [1988 c 288 s 505; 1988 c 202 s 35; 1971 c 81 s 87; 1959 c 234 s 14. Formerly RCW 34.04.140.]

Reviser's note: This section was amended by 1988 c 202 s 35, effective June 9, 1988, and by 1988 c 288 s 505, effective July 1, 1989, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1988 c 202: See note following RCW 2.24.050.

RCW 34.05.530 Standing. A person has standing to obtain judicial review of agency action if that person is aggrieved or adversely affected by the agency action. A person is aggrieved or adversely affected within the meaning of this section only when all three of the following conditions are present:

(1) The agency action has prejudiced or is likely to prejudice that person;

(2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and

(3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action. [1988 c 288 s 506.]

RCW 34.05.534 Exhaustion of administrative remedies. A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the agency whose action is being challenged, or available within any other agency authorized to exercise administrative review, except:

(1) A petitioner for judicial review of a rule need not have participated in the rule-making proceeding upon which that rule is based, have petitioned for its amendment or repeal, have petitioned the joint administrative rules review committee for its review, or have appealed a petition for amendment or repeal to the governor;

(2) A petitioner for judicial review need not exhaust administrative remedies to the extent that this chapter or any other statute states that exhaustion is not required; or

(3) The court may relieve a petitioner of the requirement to exhaust any or all administrative remedies upon a showing that:

(a) The remedies would be patently inadequate;

(b) The exhaustion of remedies would be futile; or

(c) The grave irreparable harm that would result from having to exhaust administrative remedies would clearly outweigh the public policy requiring exhaustion of administrative remedies. [1997 c 409 s 302; 1995 c 403 s 803; 1988 c 288 s 507.]

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

RCW 34.05.542 Time for filing petition for review. Subject to other requirements of this chapter or of another statute:

(1) A petition for judicial review of a rule may be filed at any time, except as limited by RCW 34.05.375.

(2) A petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order.

(3) A petition for judicial review of agency action other than the adoption of a rule or the entry of an order is not timely unless filed with the court and served on the agency, the office of the attorney general, and all other parties of record within thirty days after the agency action, but the time is extended during any period that the petitioner did not know and was under no duty to discover or could not reasonably have discovered that the agency had taken the action or that the agency action had a sufficient effect to confer standing upon the petitioner to obtain judicial review under this chapter.

(4) Service of the petition on the agency shall be by delivery of a copy of the petition to the office of the director, or other chief administrative officer or chairperson of the agency, at the principal office of the agency. Service of a copy by mail upon the other parties of record and the office of the attorney general shall be deemed complete upon deposit in the United States mail, as evidenced by the postmark.

(5) Failure to timely serve a petition on the office of the attorney general is not grounds for dismissal of the petition.

(6) For purposes of this section, service upon the attorney of record of any agency or party of record constitutes service upon the agency or party of record. [1998 c 186 s 1; 1988 c 288 s 509.]

RCW 34.05.546 Petition for review—Contents. A petition for review must set forth:

(1) The name and mailing address of the petitioner;

(2) The name and mailing address of the petitioner's attorney, if any;

(3) The name and mailing address of the agency whose action is at issue;

(4) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action;

(5) Identification of persons who were parties in any adjudicative proceedings that led to the agency action;

(6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;

(7) The petitioner's reasons for believing that relief should be granted; and

(8) A request for relief, specifying the type and extent of relief requested. [1988 c 288 s 510.]

RCW 34.05.550 Stay and other temporary remedies. (1) Unless precluded by law, the agency may grant a stay, in whole or in part, or other temporary remedy.

(2) After a petition for judicial review has been filed, a party may file a motion in the reviewing court seeking a stay or other temporary remedy.

(3) If judicial relief is sought for a stay or other temporary remedy from agency action based on public health, safety, or welfare grounds the court shall not grant such relief unless the court finds that:

(a) The applicant is likely to prevail when the court finally disposes of the matter;

(b) Without relief the applicant will suffer irreparable injury;

(c) The grant of relief to the applicant will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify the agency action in the circumstances.

(4) If the court determines that relief should be granted from the agency's action granting a stay or other temporary remedies, the court may remand the matter or may enter an order denying a stay or granting a stay on appropriate terms. [1989 c 175 s 25; 1988 c 288 s 511.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.554 Limitation on new issues. (1) Issues not raised before the agency may not be raised on appeal, except to the extent that:

(a) The person did not know and was under no duty to discover or could not have reasonably discovered facts giving rise to the issue;

(b) The agency action subject to judicial review is a rule and the person has not been a party in adjudicative proceedings that provided an adequate opportunity to raise the issue;

(c) The agency action subject to judicial review is an order and the person was not notified of the adjudicative proceeding in substantial compliance with this chapter; or

(d) The interests of justice would be served by resolution of an issue arising from:

(i) A change in controlling law occurring after the agency action; or

(ii) Agency action occurring after the person exhausted the last feasible opportunity for seeking relief from the agency.

(2) The court shall remand to the agency for determination any issue that is properly raised pursuant to subsection (1) of this section. [1988 c 288 s 512.]

RCW 34.05.558 Judicial review of facts confined to record. Judicial review of disputed issues of fact shall be conducted by the court without a jury and must be confined to the agency record for judicial review as defined by this chapter, supplemented by additional evidence taken pursuant to this chapter. [1988 c 288 s 513.]

RCW 34.05.562 New evidence taken by court or agency. (1) The court may receive evidence in addition to that contained in the agency record for judicial review, only if it relates to the validity of the

agency action at the time it was taken and is needed to decide disputed issues regarding:

(a) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action;

(b) Unlawfulness of procedure or of decision-making process; or

(c) Material facts in rule making, brief adjudications, or other proceedings not required to be determined on the agency record.

(2) The court may remand a matter to the agency, before final disposition of a petition for review, with directions that the agency conduct fact-finding and other proceedings the court considers necessary and that the agency take such further action on the basis thereof as the court directs, if:

(a) The agency was required by this chapter or any other provision of law to base its action exclusively on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;

(b) The court finds that (i) new evidence has become available that relates to the validity of the agency action at the time it was taken, that one or more of the parties did not know and was under no duty to discover or could not have reasonably been discovered until after the agency action, and (ii) the interests of justice would be served by remand to the agency;

(c) The agency improperly excluded or omitted evidence from the record; or

(d) A relevant provision of law changed after the agency action and the court determines that the new provision may control the outcome. [1988 c 288 s 514.]

RCW 34.05.566 Agency record for review—Costs. (1) Within thirty days after service of the petition for judicial review, or within further time allowed by the court or by other provision of law, the agency shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action. The record shall consist of any agency documents expressing the agency action, other documents identified by the agency as having been considered by it before its action and used as a basis for its action, and any other material described in this chapter as the agency record for the type of agency action at issue, subject to the provisions of this section.

(2) If part of the record has been preserved without a transcript, the agency shall prepare a transcript for inclusion in the record transmitted to the court, except for portions that the parties stipulate to omit in accordance with subsection (4) of this section.

(3) The agency may charge a nonindigent petitioner with the reasonable costs of preparing any necessary copies and transcripts for transmittal to the court. A failure by the petitioner to pay any of this cost to the agency relieves the agency from the responsibility for preparation of the record and transmittal to the court.

(4) The record may be shortened, summarized, or organized temporarily or, by stipulation of all parties, permanently.

(5) The court may tax the cost of preparing transcripts and copies of the record:

(a) Against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(b) In accordance with any provision of law.

(6) Additions to the record pursuant to RCW 34.05.562 must be made as ordered by the court.

(7) The court may require or permit subsequent corrections or additions to the record. [1989 c 175 s 26; 1988 c 288 s 515.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.570 Judicial review. (1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(ii) From June 10, 2004, until July 1, 2008:

(A) If the petitioner's residence or principal place of business is within the geographical boundaries of the third division of the court of appeals as defined by RCW 2.06.020(3), the petition may be filed in the superior court of Spokane, Yakima, or Thurston county; and

(B) If the petitioner's residence or principal place of business is within the geographical boundaries of district three of the first division of the court of appeals as defined by RCW 2.06.020(1), the petition may be filed in the superior court of Whatcom or Thurston county.

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action. [2004 c 30 s 1; 1995 c 403 s 802; 1989 c 175 s 27; 1988 c 288 s 516; 1977 ex.s. c 52 s 1; 1967 c 237 s 6; 1959 c 234 s 13. Formerly RCW 34.04.130.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.574 Type of relief. (1) In a review under RCW 34.05.570, the court may (a) affirm the agency action or (b) order an agency to take action required by law, order an agency to exercise discretion required by law, set aside agency action, enjoin or stay the agency action, remand the matter for further proceedings, or enter

a declaratory judgment order. The court shall set out in its findings and conclusions, as appropriate, each violation or error by the agency under the standards for review set out in this chapter on which the court bases its decision and order. In reviewing matters within agency discretion, the court shall limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency. The court shall remand to the agency for modification of agency action, unless remand is impracticable or would cause unnecessary delay.

(2) The sole remedy available to a person who is wrongfully denied licensure based upon a failure to pass an examination administered by a state agency, or under its auspices, is the right to retake the examination free of the defect or defects the court may have found in the examination or the examination procedure.

(3) The court may award damages, compensation, or ancillary relief only to the extent expressly authorized by another provision of law.

(4) If the court sets aside or modifies agency action or remands the matter to the agency for further proceedings, the court may make any interlocutory order it finds necessary to preserve the interests of the parties and the public, pending further proceedings or agency action. [1989 c 175 s 28; 1988 c 288 s 517.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.578 Petition by agency for enforcement. (1) In addition to other remedies provided by law, an agency may seek enforcement of its rule or order by filing a petition for civil enforcement in the superior court.

(2) The petition must name as respondent each alleged person against whom the agency seeks to obtain civil enforcement.

(3) Venue is determined as in other civil cases.

(4) A petition for civil enforcement filed by an agency may request, and the court may grant, declaratory relief, temporary or permanent injunctive relief, any other civil remedy provided by law, or any combination of the foregoing. [1988 c 288 s 518.]

RCW 34.05.582 Petition by others for enforcement. (1) Any person who would qualify under this chapter as having standing to obtain judicial review of an agency's failure to enforce an order directed to another person may file a petition for civil enforcement of that order, but the action may not be commenced:

(a) Until at least sixty days after the petitioner has given notice of the alleged violation and of the petitioner's intent to seek civil enforcement to the head of the agency concerned, to the attorney general, and to each person against whom the petitioner seeks civil enforcement;

(b) If the agency has filed and is diligently prosecuting a petition for civil enforcement of the same order against the same person; or

(c) If a petition for review of the same order has been filed and a stay is in effect.

(2) The petition shall name, as respondents, the agency whose order is sought to be enforced and each person against whom the petitioner seeks civil enforcement.

(3) The agency whose order is sought to be enforced may move to dismiss the petition on the grounds that it fails to qualify under this section or that the enforcement would be contrary to the policy of the agency. The court shall grant the motion to dismiss the petition unless the petitioner demonstrates that (a) the petition qualifies under this section and (b) the agency's failure to enforce its order is based on an exercise of discretion that is arbitrary or capricious.

(4) Except to the extent expressly authorized by law, a petition for civil enforcement may not request, and the court may not grant, any monetary payment apart from taxable costs. [1988 c 288 s 519.]

RCW 34.05.586 Defenses, limitations on. (1) Except as expressly provided in this section, a respondent may not assert as a defense in a proceeding for civil enforcement any fact or issue that the respondent had an opportunity to assert before the agency or a reviewing court and did not, or upon which the final determination of the agency or a reviewing court was adverse to the respondent. A respondent may assert as a defense only the following:

(a) That the rule or order is invalid under RCW 34.05.570(3) (a), (b), (c), (d), (g), or (h), but only when the respondent did not know and was under no duty to discover, or could not reasonably have discovered, facts giving rise to this issue;

(b) That the interest of justice would be served by resolution of an issue arising from:

(i) A change in controlling law occurring after the agency action; or

(ii) Agency action after the respondent has exhausted the last foreseeable opportunity for seeking relief from the agency or from a reviewing court;

(c) That the order does not apply to the respondent or that the respondent has not violated the order; or

(d) A defense specifically authorized by statute to be raised in a civil enforcement proceeding.

(2) The limitations of subsection (1) of this section do not apply to the extent that:

(a) The agency action sought to be enforced is a rule and the respondent has not been a party in an adjudicative proceeding that provided an adequate opportunity to raise the issue; or

(b) The agency action sought to be enforced is an order and the respondent was not notified actually or constructively of the related adjudicative proceeding in substantial compliance with this chapter.

(3) The court, to the extent necessary for the determination of the matter, may take new evidence. [1989 c 175 s 29; 1988 c 288 s 520.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.588 Enforcement of agency subpoena. (1) If a person fails to obey an agency subpoena issued in an adjudicative proceeding, or obeys the subpoena but refuses to testify or produce documents when

requested concerning a matter under examination, the agency or attorney issuing the subpoena may petition the superior court of any county where the hearing is being conducted, where the subpoenaed person resides or is found, or where subpoenaed documents are located, for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, shall set forth in what specific manner the subpoena has not been complied with, and shall request an order of the court to compel compliance. Upon such petition, the court shall enter an order directing the person to appear before the court at a time and place fixed in the order to show cause why the person has not obeyed the subpoena or has refused to testify or produce documents. A copy of the court's show cause order shall be served upon the person. If it appears to the court that the subpoena was properly issued, and that the particular questions the person refused to answer or the requests for production of documents were reasonable and relevant, the court shall enter an order that the person appear before the agency at the time and place fixed in the order and testify or produce the required documents, and on failing to obey this order the person shall be dealt with as for contempt of court.

(2) Agencies with statutory authority to issue investigative subpoenas may petition for enforcement of such subpoenas in accordance with subsection (1) of this section. The agency may petition the superior court of any county where the subpoenaed person resides or is found, or where subpoenaed documents are located. If it appears to the court that the subpoena was properly issued, that the investigation is being conducted for a lawfully authorized purpose, and that the testimony or documents required to be produced are adequately specified and relevant to the investigation, the court shall enter an order that the person appear before the agency at the time and place fixed in the order and testify or produce the required documents, and failing to obey this order the person shall be dealt with as for contempt of court.

(3) Petitions for enforcement of agency subpoenas are not subject to RCW 34.05.578 through 34.05.590. [1989 c 175 s 30.]

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.590 Incorporation of other judicial review provisions. Proceedings for civil enforcement are governed by the following provisions of this chapter on judicial review, as modified where necessary to adapt them to those proceedings:

(1) RCW 34.05.510(2) (ancillary procedural matters); and

(2) RCW 34.05.566 (agency record for judicial review). [1988 c 288 s 521.]

RCW 34.05.594 Review by higher court. Decisions on petitions for civil enforcement are reviewable as in other civil cases. [1988 c 288 s 522.]

RCW 34.05.598 Frivolous petitions. The provisions of RCW 4.84.185 relating to civil actions that are frivolous and advanced

without reasonable cause apply to petitions for judicial review under this chapter. [1988 c 288 s 607.]

PART VI
LEGISLATIVE REVIEW

RCW 34.05.610 Joint administrative rules review committee—Members—Appointment—Terms—Vacancies. (1) There is hereby created a joint administrative rules review committee which shall be a bipartisan committee consisting of four senators and four representatives from the state legislature. The senate members of the committee shall be appointed by the president of the senate, and the house members of the committee shall be appointed by the speaker of the house. Not more than two members from each house may be from the same political party. The appointing authorities shall also appoint one alternate member from each caucus of each house. All appointments to the committee are subject to approval by the caucuses to which the appointed members belong.

(2)(a) Members and alternates shall be appointed as soon as possible after the legislature convenes in regular session in an odd-numbered year. Except when filling a vacancy, a successor to any member or alternate must be appointed in an odd-numbered year as soon as possible after the legislature convenes in regular session, but no later than by June 30th of the same year. A vacancy on the committee must be filled in accordance with subsection (4) of this section within thirty days of the vacancy occurring. Members and alternates may be reappointed to the committee.

(b) The term of any member or alternate appointed to the committee extends until a successor is appointed and qualified, or until the member or alternate no longer serves in the legislature, whichever occurs first.

(3) The president of the senate shall appoint the chairperson and the vice chairperson from among the committee membership as soon as possible after the legislature convenes in regular session in January 2016. The speaker of the house shall appoint the chairperson and the vice chairperson in alternating even-numbered years beginning in the year 2018 from among the committee membership. The secretary of the senate shall appoint the chairperson and the vice chairperson in the alternating even-numbered years beginning in the year 2020 from among the committee membership. Appointments of the chairperson and vice chairperson shall be made in each even-numbered year as soon as possible after a legislative session convenes in regular session, but no later than by June 30th of the same year.

(4) The chairperson of the committee shall cause all meeting notices and committee documents to be sent to the members and alternates. A vacancy must be filled by appointment of a legislator from the same political party as the original appointment. The appropriate appointing authority shall make the appointment within thirty days of the vacancy occurring. [2015 2nd sp.s. c 11 s 1; 1998 c 280 s 9; 1996 c 318 s 2; 1988 c 288 s 601; 1983 c 53 s 1; 1981 c 324 s 5. Formerly RCW 34.04.210.]

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

RCW 34.05.620 Review of proposed rules—Notice. If the rules review committee finds by a majority vote of its members that a proposed rule is not within the intent of the legislature as expressed in the statute which the rule implements, or that an agency may not be adopting a proposed rule in accordance with all applicable provisions of law, the committee shall give the affected agency written notice of its decision. The notice shall be given at least seven days prior to any hearing scheduled for consideration of or adoption of the proposed rule pursuant to RCW 34.05.320. The notice shall include a statement of the review committee's findings and the reasons therefor. When the agency holds a hearing on the proposed rule, the agency shall consider the review committee's decision. [1996 c 318 s 3; 1994 c 249 s 17; 1988 c 288 s 602; 1987 c 451 s 1; 1981 c 324 s 6. Formerly RCW 34.04.220.]

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

RCW 34.05.630 Review of existing rules—Policy and interpretive statements, etc.—Notice—Hearing. (1) All rules required to be filed pursuant to RCW 34.05.380, and emergency rules adopted pursuant to RCW 34.05.350, are subject to selective review by the committee.

(2) All agency policy and interpretive statements, guidelines, and documents that are of general applicability, or their equivalents, are subject to selective review by the committee to determine whether or not a statement, guideline, or document that is of general applicability, or its equivalent, is being used as a rule that has not been adopted in accordance with all applicable provisions of law.

(3) If the rules review committee finds by a majority vote of its members: (a) That an existing rule is not within the intent of the legislature as expressed by the statute which the rule implements, (b) that the rule has not been adopted in accordance with all applicable provisions of law, or (c) that an agency is using a policy or interpretive statement in place of a rule, the agency affected shall be notified of such finding and the reasons therefor. Within thirty days of the receipt of the rules review committee's notice, the agency shall file notice of a hearing on the rules review committee's finding with the code reviser and mail notice to all persons who have made timely request of the agency for advance notice of its rule-making proceedings as provided in RCW 34.05.320. The agency's notice shall include the rules review committee's findings and reasons therefor, and shall be published in the Washington state register in accordance with the provisions of chapter 34.08 RCW.

(4) The agency shall consider fully all written and oral submissions regarding (a) whether the rule in question is within the intent of the legislature as expressed by the statute which the rule implements, (b) whether the rule was adopted in accordance with all applicable provisions of law, and (c) whether the agency is using a policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, in place of a rule. [1998 c 21 s 1; 1996 c 318 s 4; 1994 c 249 s 18; 1993 c 277 s 1; 1988 c 288 s 603; 1987 c 451 s 2; 1981 c 324 s 7. Formerly RCW 34.04.230.]

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

RCW 34.05.640 Committee objections to agency intended action—Statement in register and WAC—Suspension of rule. (1) Within seven days of an agency hearing held after notification of the agency by the rules review committee pursuant to RCW 34.05.620 or 34.05.630, the affected agency shall notify the committee of its intended action on a proposed or existing rule to which the committee objected or on a committee finding of the agency's failure to adopt rules.

(2) If the rules review committee finds by a majority vote of its members: (a) That the proposed or existing rule in question will not be modified, amended, withdrawn, or repealed by the agency so as to conform with the intent of the legislature, (b) that an existing rule was not adopted in accordance with all applicable provisions of law, or (c) that the agency will not replace the policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, with a rule, the rules review committee may, within thirty days from notification by the agency of its intended action, file with the code reviser notice of its objections together with a concise statement of the reasons therefor. Such notice and statement shall also be provided to the agency by the rules review committee.

(3)(a) If the rules review committee makes an adverse finding regarding an existing rule under subsection (2)(a) or (b) of this section, the committee may, by a majority vote of its members, recommend suspension of the rule. Within seven days of such vote the committee shall transmit to the appropriate standing committees of the legislature, the governor, the code reviser, and the agency written notice of its objection and recommended suspension and the concise reasons therefor. Within thirty days of receipt of the notice, the governor shall transmit to the committee, the code reviser, and the agency written approval or disapproval of the recommended suspension. If the suspension is approved by the governor, it is effective from the date of that approval and continues until ninety days after the expiration of the next regular legislative session.

(b) If the rules review committee makes an adverse finding regarding a policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, under subsection (2)(c) of this section, the committee may, by a majority vote of its members, advise the governor of its finding.

(4) The code reviser shall publish transmittals from the rules review committee or the governor issued pursuant to subsection (2) or (3) of this section in the Washington state register and shall publish in the next supplement and compilation of the Washington Administrative Code a reference to the committee's objection or recommended suspension and the governor's action on it and to the issue of the Washington state register in which the full text thereof appears.

(5) The reference shall be removed from a rule published in the Washington Administrative Code if a subsequent adjudicatory proceeding determines that the rule is within the intent of the legislature or was adopted in accordance with all applicable laws, whichever was the

objection of the rules review committee. [1998 c 21 s 2; 1996 c 318 s 5; 1994 c 249 s 19; 1993 c 277 s 2; 1988 c 288 s 604; 1987 c 451 s 3; 1981 c 324 s 8. Formerly RCW 34.04.240.]

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

RCW 34.05.650 Recommendations by committee to legislature. The rules review committee may recommend to the legislature that the original enabling legislation serving as authority for the adoption of any rule reviewed by the committee be amended or repealed in such manner as the committee deems advisable. [1988 c 288 s 605; 1987 c 451 s 4; 1981 c 324 s 9. Formerly RCW 34.04.250.]

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

RCW 34.05.655 Petition for review. (1) Any person may petition the rules review committee for a review of a proposed or existing rule or a proposed or existing policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent. A petition to review a statement, guideline, or document that is of general applicability, or its equivalent, may only be filed for the purpose of requesting the committee to determine whether the statement, guideline, or document that is of general applicability, or its equivalent, is being used as a rule that has not been adopted in accordance with all provisions of law. Within thirty days of the receipt of the petition, the rules review committee shall acknowledge receipt of the petition and describe any initial action taken. If the rules review committee rejects the petition, a written statement of the reasons for rejection shall be included.

(2) A person may petition the rules review committee under subsection (1) of this section requesting review of an existing rule only if the person has petitioned the agency to amend or repeal the rule under RCW 34.05.330(1) and such petition was denied.

(3) A petition for review of a rule under subsection (1) of this section shall:

(a) Identify with specificity the proposed or existing rule to be reviewed;

(b) Identify the specific statute identified by the agency as authorizing the rule, the specific statute which the rule interprets or implements, and, if applicable, the specific statute the department is alleged not to have followed in adopting the rule;

(c) State the reasons why the petitioner believes that the rule is not within the intent of the legislature, or that its adoption was not or is not in accordance with law, and provide documentation to support these statements;

(d) Identify any known judicial action regarding the rule or statutes identified in the petition.

A petition to review an existing rule shall also include a copy of the agency's denial of a petition to amend or repeal the rule

issued under RCW 34.05.330(1) and, if available, a copy of the governor's denial issued under RCW 34.05.330(3).

(4) A petition for review of a policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, under subsection (1) of this section shall:

(a) Identify the specific policy or interpretative statement, guideline, or document that is of general applicability, or its equivalent, to be reviewed;

(b) Identify the specific statute which the rule interprets or implements;

(c) State the reasons why the petitioner believes that the policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, meets the definition of a rule under RCW 34.05.010 and should have been adopted according to the procedures of this chapter;

(d) Identify any known judicial action regarding the policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, or statutes identified in the petition.

(5) Except for petitions that the rules review committee rejects, the rules review committee shall make a final decision within ninety days of receipt of a petition for review under subsection (1) of this section. If the legislature meets in regular or special session at any time before the rules review committee makes a final decision on a petition, the rules review committee may defer making a final decision until after the adjournment sine die of the regular or special session or sessions. The rules review committee shall make a final decision on a deferred petition within ninety days of adjournment. During a legislative session, petitioners may bring any concerns raised in a petition to any legislator, and those concerns may be addressed directly through legislation. [2015 2nd sp.s. c 11 s 2; 1998 c 21 s 3; 1996 c 318 s 7; 1995 c 403 s 502.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

RCW 34.05.660 Review and objection procedures—No presumption established. It is the express policy of the legislature that establishment of procedures for review of administrative rules by the legislature and the notice of objection required by RCW 34.05.630(3) and 34.05.640(2) in no way serves to establish a presumption as to the legality or constitutionality of a rule in any subsequent judicial proceedings interpreting such rules. [2001 c 64 s 2; 1988 c 288 s 606; 1981 c 324 s 10. Formerly RCW 34.04.260.]

Legislative affirmation—Severability—1981 c 324: See notes following RCW 34.05.010.

RCW 34.05.665 Submission of rule for review—State employees protected. Any individual employed or holding office in any department or agency of state government may submit rules warranting review to the rules review committee. Any such state employee is protected under chapter 42.40 RCW. [1995 c 403 s 503.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

RCW 34.05.671 Reports—Advisory boards—Staff. (1) The rules review committee may make reports from time to time to the members of the legislature and to the public with respect to any of its findings or recommendations. The committee shall keep complete minutes of its meetings.

(2) The committee may establish ad hoc advisory boards, including but not limited to, ad hoc economics or science advisory boards to assist the committee in its rules review functions.

(3) The committee may hire staff as needed to perform functions under this chapter. [1995 c 403 s 505.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

RCW 34.05.675 Inspection of properties—Oaths, subpoenas, witnesses, depositions. In the discharge of any duty imposed under this chapter, the rules review committee may examine and inspect all properties, equipment, facilities, files, records, and accounts of any state office, department, institution, board, committee, commission, or agency, and administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause the deposition of witnesses, either residing within or without the state, to be taken in the manner prescribed by law for taking depositions in civil actions in the superior courts. [1995 c 403 s 506.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

RCW 34.05.681 Enforcement—Committee subpoena—Refusal to testify. In case of the failure on the part of any person to comply with any subpoena issued in [on] behalf of the rules review committee, or on the refusal of any witness to testify to any matters regarding which he or she may be lawfully interrogated, it is the duty of the superior court of any county, or of the judge thereof, on application of the committee, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify in the court. [1995 c 403 s 507.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

PART IX
TECHNICAL PROVISIONS

RCW 34.05.900 Captions and headings. Section captions and subchapter headings used in this chapter do not constitute any part of the law. [1988 c 288 s 703.]

RCW 34.05.902 Effective date—Application—1988 c 288. RCW 34.05.001 through 34.05.902 shall take effect on July 1, 1989, and shall apply to all rule-making actions and agency proceedings begun on or after that date. Rule-making actions or other agency proceedings begun before July 1, 1989, shall be completed under the applicable provisions of chapter 28B.19 or 34.04 RCW existing immediately before that date in the same manner as if they were not amended by chapter 288, Laws of 1988 or repealed by section 701 of chapter 288, Laws of 1988. [1988 c 288 s 705.]

Recodification—Correction of statutory references—1988 c 288: "Parts X through XV of this act shall constitute a new chapter in Title 34 RCW, and the sections amended or set forth in this act shall be recodified in the order they appear in this act. The code reviser shall correct all statutory references to these sections and to the repealed chapters 28B.19 and 34.04 RCW to reflect this recodification and repeal." [1988 c 288 s 706.]