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| **EXEMPTIONS FROM THE REGULATORY FAIRNESS ACT**  Each rulemaking is unique, so we recommend that agency staff consult with their assigned Assistant Attorney General and internal regulatory experts throughout the rulemaking process. | | | |
| Rules are exempt if they: | RCW | Text of the RCW | Notes: |
| **Are expedited rules** | [19.85.025](https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.025)  [34.05.353](https://app.leg.wa.gov/RCW/default.aspx?cite=34.05.353) | (1) Unless an agency receives a written objection to the expedited repeal of a rule, this chapter does not apply to a rule proposed for expedited repeal pursuant to [RCW 34.05.353]. If an agency receives a written objection to expedited repeal of the rule, this chapter applies to the rule-making proceeding. (2) This chapter does not apply to a rule proposed for expedited adoption under [RCW 34.05.353], unless a written objection is timely filed with the agency and the objection is not withdrawn.  (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 19.85.02. | Can be used unless an agency receives a written objection.  *\*Note that the categories of expedited rules largely overlap with the list in RCW 34.05.310(4) but the lists aren’t exactly identical.* |
| **Are emergency rules** | [19.85.025](https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.025)  [34.05.310](https://app.leg.wa.gov/RCW/default.aspx?cite=34.05.310) | (3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).  (4)(a) Emergency rules adopted under RCW 34.05.350. |  |
| **Relate only to internal governmental operations** | [19.85.025](https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.025)  [34.05.310](https://app.leg.wa.gov/RCW/default.aspx?cite=34.05.310) | (3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).  (4)(b) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party. |  |
| **Adopt federal or state laws or regulations by reference without material change** | [19.85.025](https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.025)  [34.05.310](https://app.leg.wa.gov/RCW/default.aspx?cite=34.05.310) | (3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).  (4)(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. | Adopting a process already established-this rule incorporates by reference another state rule that has already been analyzed under previous rulemaking. |
| **Make typographical or clarifying changes without changing the effect** | [19.85.025](https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.025)  [34.05.310](https://app.leg.wa.gov/RCW/default.aspx?cite=34.05.310) | (3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).  (4)(d) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect. | Correcting typos, language, clarifying definitions…as long as the changes do not change the effect of the rule. |
| **Have content explicitly dictated by statute** | [19.85.025](https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.025)  [34.05.310](https://app.leg.wa.gov/RCW/default.aspx?cite=34.05.310) | (3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).  (4)(e) Rules the content of which is explicitly and specifically dictated by statute | Include what statute is dictating. |
| **Set or adjust fees or rates according to legislative standards** | [19.85.025](https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.025)  [34.05.310](https://app.leg.wa.gov/RCW/default.aspx?cite=34.05.310) | (3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).  (4)(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. | *\*There isn’t a definition of “legislative standards” in RCW 19.85. If the statute which authorizes the agency to set fees includes a specific amount for the fee, a range for the fee, or a method for setting or calculating the fee, then an SBEIS is likely not required. Where the authorizing statute gives no limits or guidance on setting the fee amount, adopting rules without preparing an SBEIS presents risk to the agency. Agencies are advised to seek legal advice in that situation.* |
| **Relate to the process of agency hearings or applying for a license or permit** | [19.85.025](https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.025)  [34.05.310](https://app.leg.wa.gov/RCW/default.aspx?cite=34.05.310) | (3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).  (4)(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. |  |
| **Include a cost-benefit analysis with all requirements of an SBEIS**  **(**[**19.85.025**](https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.025)**)** | [34.05.328](https://app.leg.wa.gov/RCW/default.aspx?cite=34.05.328) | (4) An agency is not required to prepare a separate small business economic impact statement under RCW 19.85.040 if it prepared an analysis under RCW that meets the requirements of a small business economic impact statement, and if the agency reduced the costs imposed by the rule on small business to the extent required by RCW 19.85.030(3). The portion of the analysis that meets the requirements of RCW 19.85.040 shall be filed with the code reviser and provided to any person requesting it in lieu of a separate small business economic impact statement |  |
| **Complete the pilot rule process** | [19.85.030](https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030) | (1)(a)(ii) … However, if the agency has completed the pilot rule process as defined by RCW 34.05.313 before filing the notice of a proposed rule, the agency is not required to prepare a small business economic impact statement. | Agency must have approved process for pilot rulemaking. |
| **Are adopted by a referendum under the Agricultural Enabling Act** | [15.65.570](https://app.leg.wa.gov/RCW/default.aspx?cite=15.65.570) | (2) Rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310, chapter 19.85 RCW, the regulatory fairness act, and RCW 43.135.055 when the adoption of the rules is determined by a referendum vote of the affected parties. |  |
| **Compliance with federal law** | [19.85.061](https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.061) | Unless so requested by a majority vote of the joint administrative rules review committee under RCW [19.85.030](http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030), an agency is not required to comply with this chapter when adopting any rule solely for the purpose of conformity or compliance, or both, with federal statute or regulations. In lieu of the statement required under RCW [19.85.030](http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030), the agency shall file a statement citing, with specificity, the federal statute or regulation with which the rule is being adopted to conform or comply, and describing the consequences to the state if the rule is not adopted. | Amending existing rules to comply, adopt to or comply with a federal statute or regulation.  *\*A statement must be filed describing the federal law and the consequences of failure to adopt the proposed rules.* |
| **Application of chapter-Limited** | [19.85.025](https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.025) | (5) An agency is not required to prepare a separate small business economic impact statement under RCW [19.85.040](http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040) if it prepared an analysis under RCW [34.05.328](http://app.leg.wa.gov/RCW/default.aspx?cite=34.05.328) that meets the requirements of a small business economic impact statement, and if the agency reduced the costs imposed by the rule on small business to the extent required by RCW [19.85.030](http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030)(2). The portion of the analysis that meets the requirements of RCW [19.85.040](http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040) shall be filed with the code reviser and provided to any person requesting it in lieu of a separate small business economic impact statement. | *\*The agency must be able to demonstrate this and should include the documentation in the rulemaking file.* |
| **Agency Specific: Department of Social & Health Services** | [34.05.328](https://app.leg.wa.gov/rcw/default.aspx?cite=34.05.328) | (5)(b)(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 | *Applies only to DSHS* |
| **NEW as of 2017-**  [**SSHB 1120**](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/House/1120-S2.SL.pdf?cite=2017%20c%2053%20§%201)  **Application of chapter-Limited** | [19.85.025](https://app.leg.wa.gov/RCW/default.aspx?cite=19.85.025) | (4) This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses. | Newest exemption, make sure it is added to any training manual that has a list of exemptions prior to 2017. |

\**Attorney General’s RFA Guidance found on* [RFA Support Webpage ORIA](https://www.oria.wa.gov/site/alias__oria/934/regulatory-fairness-act-support.aspx)