



PROPOSED RULE MAKING

CR-102 (June 2024)
(Implements RCW 34.05.320)
Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 17, 2025

TIME: 9:49 AM

WSR 25-07-076

Agency: Washington State Environmental and Land Use Hearings Office

☒ **Original Notice**

☐ **Supplemental Notice to WSR** _____

☐ **Continuance of WSR** _____

☒ **Preproposal Statement of Inquiry was filed as WSR** 24-08-013 ; or

☐ **Expedited Rule Making--Proposed notice was filed as WSR** _____; or

☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

☐ **Proposal is exempt under RCW** _____.

Title of rule and other identifying information: (describe subject) WAC 371-08 Environmental and Land Use Hearings Office (Pollution Control Hearings Board) Practice and Procedure

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
05/02/25	10:00 a.m.	<p>Zoom: https://eluhwa-wa.gov.zoom.us/j/87938757276</p> <p>Meeting ID: 879 3875 7276</p> <p>One tap mobile +12532050468,,87938757276# US +12532158782,,87938757276# US (Tacoma)</p> <p>Dial by your location</p> <ul style="list-style-type: none">• +1 253 205 0468 US• +1 253 215 8782 US (Tacoma)• +1 346 248 7799 US (Houston)• +1 669 444 9171 US• +1 669 900 6833 US (San Jose)• +1 719 359 4580 US• +1 360 209 5623 US• +1 386 347 5053 US• +1 507 473 4847 US• +1 564 217 2000 US• +1 646 931 3860 US• +1 689 278 1000 US• +1 929 205 6099 US (New York)• +1 301 715 8592 US (Washington DC)• +1 305 224 1968 US• +1 309 205 3325 US• +1 312 626 6799 US (Chicago) <p>Find your local number: https://eluhwa-wa.gov.zoom.us/j/kcZ73TjcRx</p>	<p>The public hearing will be conducted online via Zoom, however, participants may comment by phone using the Zoom call-in information or they may comment in person at the physical location.</p>

		Physical Location: 1111 Israel Road SW, Suite 301, Tumwater, WA 98501																	
Date of intended adoption: <u>May 30, 2025</u> (Note: This is NOT the effective date)																			
Submit written comments to: Name Jamie Merly Address 1111 Israel Rd. SW, Suite 301, Tumwater, WA 98501 Email Jamie.Merly@elaho.wa.gov Fax Other Beginning (date and time) 8:00 a.m. on <u>03/17/25</u> By (date and time) 5:00 p.m. on <u>05/05/25</u>		Assistance for persons with disabilities: Contact Jamie Merly Phone (360) 485-1282 Fax TTY Email Jamie.Merly@elaho.wa.gov Other By (date) <u>05/01/25</u>																	
Purpose of the proposal and its anticipated effects, including any changes in existing rules: Clarifies "date of receipt" of board orders or decisions to align with Fode v. Dep't of Ecology, 22 Wn. App. 2d 22, 509 P.3d 325 (2022); adds new sections with procedures regarding the board's handling of confidential and exempt information and issuing protective orders; updates language to be gender neutral; adds new section and amends sections related to consolidation of appeals to align with RCW 43.21B.340; removes the requirement that settlement agreements be submitted to the board upon requesting a dismissal due to settlement; amends a section and adds a new section to give clarity on requirements for filing exhibits;																			
Reasons supporting proposal: The rule changes provide clarity to Pollution Control Hearings Board litigants of board procedures. They align the board rules with recent caselaw and statutory changes. They align with current business standards respecting gender non-binary designations.																			
Statutory authority for adoption: RCW 43.21B.170																			
Statute being implemented: RCW 43.21B																			
Is rule necessary because of a: <div style="display: flex; justify-content: space-between;"> <div> Federal Law? Federal Court Decision? State Court Decision? </div> <div> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No </div> </div> If yes, CITATION: Fode v. Dep't of Ecology, 22 Wn. App. 2d 22, 509 P.3d 325 (2022)																			
Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:																			
Name of proponent: (person or organization) Washington State Environmental and Land Use Hearings Office, Pollution Control Hearings Board Type of proponent: <input type="checkbox"/> Private. <input type="checkbox"/> Public. <input checked="" type="checkbox"/> Governmental.																			
Name of agency personnel responsible for: <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <thead> <tr> <th></th> <th style="text-align: left;">Name</th> <th style="text-align: left;">Office Location</th> <th style="text-align: left;">Phone</th> </tr> </thead> <tbody> <tr> <td>Drafting</td> <td>Jamie Merly</td> <td>1111 Israel Rd. SW, Tumwater, WA 98501</td> <td>(360) 485-1282</td> </tr> <tr> <td>Implementation</td> <td>Jamie Merly</td> <td>1111 Israel Rd. SW, Tumwater, WA 98501</td> <td>(360) 485-1282</td> </tr> <tr> <td>Enforcement</td> <td>Jamie Merly</td> <td>1111 Israel Rd. SW, Tumwater, WA 98501</td> <td>(360) 485-1282</td> </tr> </tbody> </table>					Name	Office Location	Phone	Drafting	Jamie Merly	1111 Israel Rd. SW, Tumwater, WA 98501	(360) 485-1282	Implementation	Jamie Merly	1111 Israel Rd. SW, Tumwater, WA 98501	(360) 485-1282	Enforcement	Jamie Merly	1111 Israel Rd. SW, Tumwater, WA 98501	(360) 485-1282
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Is a school district fiscal impact statement required under RCW 28A.305.135? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, insert statement here: <div style="border: 1px solid black; padding: 10px; margin-top: 10px;"> The public may obtain a copy of the school district fiscal impact statement by contacting: Name Address Phone Fax TTY Email Other </div>																			
Is a cost-benefit analysis required under RCW 34.05.328? <input type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting: Name Address																			

Phone
Fax
TTY
Email
Other

☒ No: Please explain: The Environmental and Land Use Hearings Office is not specifically listed in RCW 34.05.328 (5)(a)(i) and does not intend to make this section voluntarily applicable to this rule update per subsection 5(a)(ii). The rule changes amend procedural rules as defined in RCW 34.05.328 (5)(c)(i)(A). Unless subsection 5(a)(ii) is invoked by the joint administrative rules committee after filing the CR-102, no cost benefit analysis is required.

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

☐ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570](#)(2) because it was adopted by a referendum.

☐ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(3). Check all that apply:

- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

☐ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(4). (Does not affect small businesses).

☐ This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

- ☒ The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.
- ☐ The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- ☐ The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- ☐ No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____
- ☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name
Address
Phone

Fax
TTY
Email
Other

Date: 03/17/25

Name: Jamie Merly

Title: Director of Legal and Administrative Services

Signature:

A handwritten signature in blue ink, appearing to read "Jamie Merly", with a checkmark at the end.