

# Chapter 139-03 WAC

## PROCEDURES

### WAC

139-03-010	Adoption of model rules of procedure.
139-03-020	Request for adjudicative proceedings.
139-03-030	Request for exemption, waiver, extension or variance.
139-03-045	Prehearing conferences.
139-03-070	Burden and standard of proof.
139-03-075	Review of initial orders.
139-03-080	Petitions for stay of effectiveness.

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

139-03-040	Method of recording. [Statutory Authority: RCW 43.101.080. 00-17-017, § 139-03-040, filed 8/4/00, effective 9/4/00.] Repealed by 05-07-049, filed 3/11/05, effective 4/11/05. Statutory Authority: RCW 43.101.080.
139-03-050	Discovery. [Statutory Authority: RCW 43.101.080. 00-17-017, § 139-03-050, filed 8/4/00, effective 9/4/00.] Repealed by 05-07-049, filed 3/11/05, effective 4/11/05. Statutory Authority: RCW 43.101.080.
139-03-060	Procedure for closing parts of hearings. [Statutory Authority: RCW 43.101.080. 00-17-017, § 139-03-060, filed 8/4/00, effective 9/4/00.] Repealed by 05-07-049, filed 3/11/05, effective 4/11/05. Statutory Authority: RCW 43.101.080.

**WAC 139-03-010 Adoption of model rules of procedure.** Practice and procedure before the commission shall be in accordance with the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended. The model rules hereby adopted are found in chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and the procedural rules adopted in this title, the procedural rules adopted in this title shall govern.

Peace officer certification proceedings before the commission are governed by chapter 139-06 WAC.

[Statutory Authority: RCW 43.101.080. 05-07-049, § 139-03-010, filed 3/11/05, effective 4/11/05; 00-17-017, § 139-03-010, filed 8/4/00, effective 9/4/00.]

**WAC 139-03-020 Request for adjudicative proceedings.** (1) All applications requesting that the commission conduct an adjudicative proceeding shall be made on a form provided by the commission for that purpose. The application must specify the issue to be brought before the commission, including:

- The action for which review is requested, identified by date and description of action;
- The direct and adverse effects of such action;
- The corrective or remedial action or other relief sought;
- The name and mailing address of the requesting party; and
- A statement that the person signing the request for review has read it and that to the best of their knowledge or information and belief the contents thereof are true.

(3/11/05)

(2) Applications for adjudicative proceedings shall be made within thirty calendar days of:

(a) Service upon the applicant of the proposed commission action giving rise to the application; or

(b) Notice to the applicant from any source of action by the commission or commission staff which the applicant believes will adversely affect the applicant.

(3) Failure of an applicant to file an application for an adjudicative proceeding within the time limits set forth in subsection (2) of this section, constitutes a default and results in the loss of the applicant's right to an adjudicative proceeding. The commission may proceed to resolve the matter pursuant to RCW 34.05.440(1).

(4) An application for adjudicative proceeding must be served personally or delivered by certified mail upon the director of the commission.

(5) The commission will process applications for adjudicative proceedings in accordance with RCW 34.05.416 and 34.05.419.

(6) If the commission decides to proceed with an adjudicative proceeding, the director will designate a presiding officer, which may be an administrative law judge from the state office of administrative hearings. The presiding officer will: Schedule and conduct an adjudicative proceeding under chapter 34.05 RCW; and

(7) Upon receiving a request for adjudicative proceeding, the commission may at the request of the applicant, or on its own initiative, schedule an informal settlement conference that shall be without prejudice to the rights of the parties.

(8) This section shall not apply to a request for a variance or exemption pursuant to WAC 139-03-030.

[Statutory Authority: RCW 43.101.080. 05-07-049, § 139-03-020, filed 3/11/05, effective 4/11/05; 00-17-017, § 139-03-020, filed 8/4/00, effective 9/4/00.]

**WAC 139-03-030 Request for exemption, waiver, extension or variance.** (1) Requests for exemption, waiver, extension or variance from the commission's regulations may be pursued only under this section.

(2) A request for exemption, waiver, extension or variance may be made only by the head of a law enforcement or corrections agency on behalf of an employee or employees directly affected by the regulation. Where a request for an exemption or variance is on behalf of a chief of police, such request shall be made by the appointing authority. Requests under this section shall be for mitigation only and shall not raise questions of law or of fact. Such requests shall be submitted in writing to the executive director of the commission and shall include, where applicable:

(a) The particular regulation from which exemption, waiver, extension or variance is sought;

(b) The nature of the exemption, waiver, extension or variance which is sought;

[Ch. 139-03 WAC—p. 1]

(c) The mitigating factors in the particular case;

(d) The name and mailing address of the requesting party and any person who will personally appear in support of the requesting party, including legal counsel;

(e) A statement that the person signing the request has read it and that to the best of his or her knowledge or information and belief the contents thereof are true.

(3) Upon receipt of a request under this section which satisfies the requirements of subsection (2) of this section, the executive director shall schedule the request for full consideration at the next commission meeting. If it is determined by the chair that circumstances justify expedited review, the chair may schedule a special meeting for the sole purpose of effecting review. After full consideration of the matter, the commission shall deny the request, grant the request or provide alternative mitigating relief.

[Statutory Authority: RCW 43.101.080. 00-17-017, § 139-03-030, filed 8/4/00, effective 9/4/00.]

**WAC 139-03-045 Prehearing conferences.** The presiding officer shall hold one or more prehearing conferences in each case, which may be held telephonically and shall be attended by the parties or their attorneys. The parties shall be prepared to discuss the timing and filing of any motions, and witness and exhibit lists, as well as the need for discovery, in addition to those matters identified in WAC 10-08-130(1). A prehearing order shall be issued at the conclusion of the conference.

[Statutory Authority: RCW 43.101.080. 05-07-049, § 139-03-045, filed 3/11/05, effective 4/11/05.]

**WAC 139-03-070 Burden and standard of proof.**

Unless otherwise provided by law, the appealing party has the burden of proof, and the standard of proof on all factual issues is preponderance of the evidence.

[Statutory Authority: RCW 43.101.080. 00-17-017, § 139-03-070, filed 8/4/00, effective 9/4/00.]

**WAC 139-03-075 Review of initial orders.** The initial order will become final unless, within thirty days of mailing of the initial order to the parties, the commission determines that the initial order should be reviewed or a party to the proceedings files a petition for review of the initial order. A petition for review shall set forth in detail the grounds for review and the party filing the petition shall be deemed to have waived all objections or claims of irregularities not specifically set forth therein. The initial order will be considered by the commission at the next succeeding regularly scheduled meeting of the commission at which review can practicably be conducted. The commission shall thereafter enter a final order.

[Statutory Authority: RCW 43.101.080. 05-07-049, § 139-03-075, filed 3/11/05, effective 4/11/05.]

**WAC 139-03-080 Petitions for stay of effectiveness.**

Disposition of a petition for stay of effectiveness of a final order shall be made by the chair of the commission or the chair's designee.

[Statutory Authority: RCW 43.101.080. 00-17-017, § 139-03-080, filed 8/4/00, effective 9/4/00.]