

Regulatory Fairness Act (RFA) In Rule Making and Small Business Economic Impact Statements (SBEIS)

WHAT IS THE REGULATORY FAIRNESS ACT? Rules adopted by state agencies can have a disproportionate impact on the state's small businesses because of the size of those businesses, threatening the very existence of those small businesses. The legislature therefore enacted the Regulatory Fairness Act with the intent of reducing the disproportionate impact of state administrative rules on small business.

WHERE CAN I FIND THE RFA? Online at the Code Reviser's Office under the Revised Code of Washington (RCW) or by clicking links below.

RFA, [Chapter 19.85 RCW](#):

- [RCW 19.85.011](#) Finding.
- [RCW 19.85.020](#) Definitions.
- [RCW 19.85.025](#) Application of chapter—Limited.
- [RCW 19.85.030](#) Agency rules—Small business economic impact statement—Reduction of costs imposed by rule.
- [RCW 19.85.040](#) Small business economic impact statement—Purpose—Contents.
- [RCW 19.85.050](#) Agency plan for review of business rules—Scope—Factors applicable to review—Annual list.
- [RCW 19.85.061](#) Compliance with federal law.
- [RCW 19.85.070](#) Small business economic impact statement—Notice of proposed rule.

HOW DOES THE RFA PERTAIN TO THE RULE-MAKING PROCESS? The RFA requires agencies to: Inform the public if their rules impact small businesses; indicate under what statute the rules are exempt from RFA requirements; or file a small business economic impact statement (SBEIS) if necessary. Use the CR-102 form for proposed rule making to select or explain all impacts and exemptions or to publish an SBEIS.

CR-102 PROPOSED RULE-MAKING NOTICE (form template at [WSR web page - https://leg.wa.gov/CodeReviser/Pages/Washington State Register.aspx](https://leg.wa.gov/CodeReviser/Pages/Washington%20State%20Register.aspx)):

- Select or add all exemptions that apply to the rules.
- Add explanations for alternate exemptions not provided on form.
- Explain why rules don't impose more-than-minor costs on businesses.

Note: CR-102 form contains links to ORIA's website for RFA assistance and templates.

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):	
<input type="checkbox"/> 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: []	
<input type="checkbox"/> 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.	
<input type="checkbox"/> 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.	
<input type="checkbox"/> 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 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)
<input type="checkbox"/> This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025 (4). (Does not affect small businesses).	
<input type="checkbox"/> 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: <i>Check one.</i>	
<input type="checkbox"/> The rule proposal: Is fully exempt. (<i>Skip section 3.</i>) Exemptions identified above apply to all portions of the rule proposal.	
<input type="checkbox"/> The rule proposal: Is partially exempt. (<i>Complete section 3.</i>) 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): []	
<input type="checkbox"/> The rule proposal: Is not exempt. (<i>Complete section 3.</i>) No exemptions were identified above.	
(3) Small business economic impact statement: <i>Complete this section if any portion is not exempt.</i>	

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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?
<input type="checkbox"/> No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. []
<input type="checkbox"/> 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:

IF RULES ARE NOT EXEMPT FROM RFA REQUIREMENTS AND DO IMPOSE MORE-THAN-MINOR COSTS ON BUSINESSES:

An agency shall prepare a *small business economic impact statement (SBEIS)*:

- If the proposed rule will impose more-than-minor costs on businesses in an industry; or
- If requested to do so by a majority vote of the joint administrative rules review committee within 45 days of receiving the notice of proposed rule making under RCW 34.05.320.

(If an 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 an SBEIS.)

IF AN SBEIS IS REQUIRED: See [RCW 19.85.030](#) Agency rules—Small business economic impact statement (SBEIS)—Reduction of costs imposed by rule, for content agencies should provide in the SBEIS.

“... Methods of reducing the impact of the proposed rule on small businesses:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or
- (f) Any other mitigation techniques including those suggested by small businesses or small business advocates.”

WHERE DO I START? What are my exemptions, if any? Do I need an SBEIS?

The Office for Regulatory Innovation and Assistance (ORIA) can help. ORIA provides agencies information and resources to help them meet regulatory requirements of the rule-making process (CR-102 form). **NOTE: The legislature asked agencies to better explain how rules impact small businesses and ORIA was created. For recent changes to RFA, see [2SHB 1120](#) (2017).**

[OFFICE OF REGULATORY INNOVATION AND ASSISTANCE](http://www.oria.wa.gov) – ORIA.WA.GOV

Under Government, Regulatory Fairness Act (RFA, Chapter 19.85 RCW):

- GUIDANCE DOCUMENTS
- DATA AND BUSINESS INFORMATION SOURCES
- MINOR COST THRESHOLD CALCULATOR

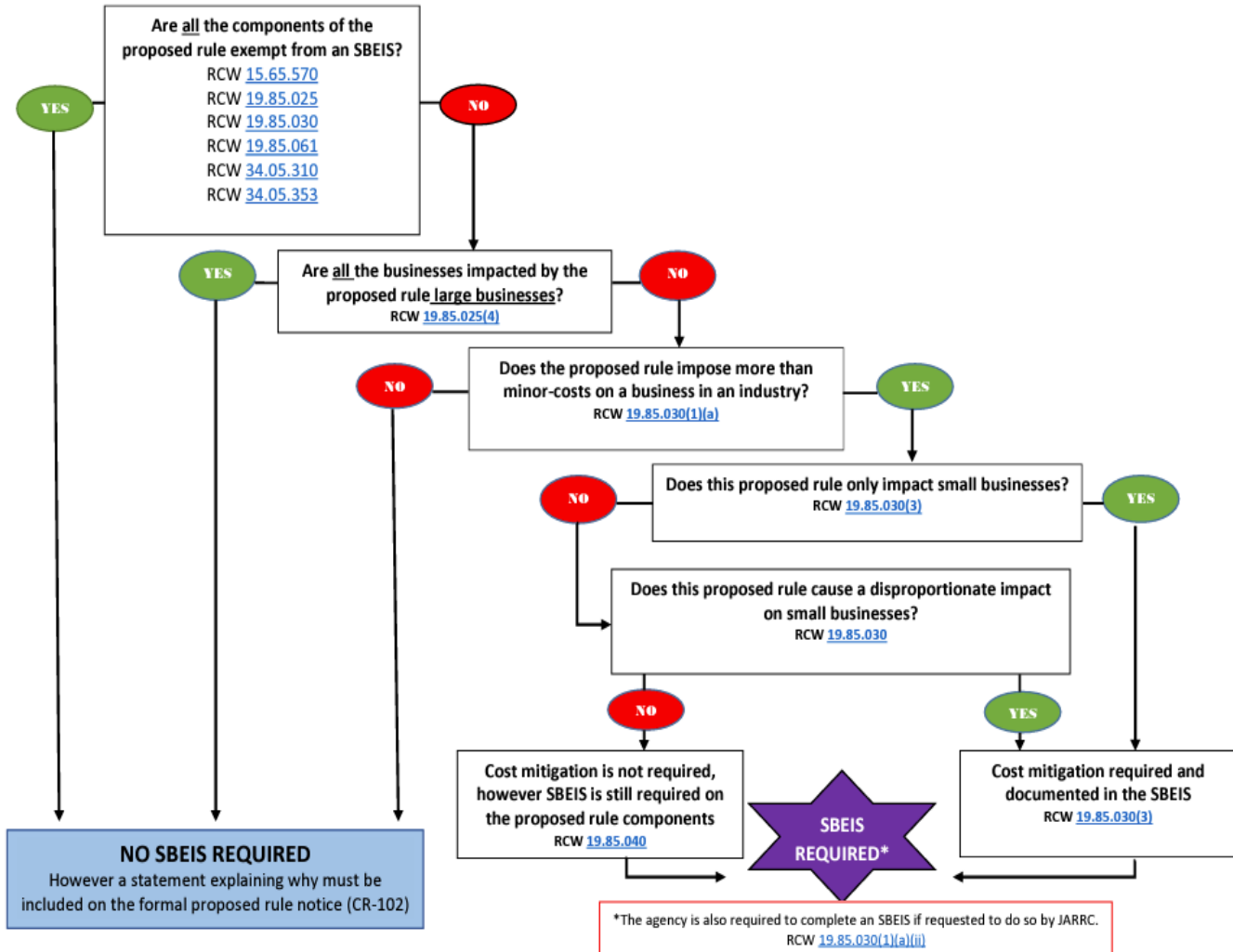
The screenshot shows the ORIA website homepage. At the top, there is a navigation bar with the ORIA logo and the text "GOVERNOR'S OFFICE FOR REGULATORY INNOVATION & ASSISTANCE". The navigation menu includes "Business", "Permitting", "Government", "Publications", "FAQ", and "Contact Us". There are also social media icons for Instagram, Facebook, X, LinkedIn, and YouTube. The main content area features a green banner with the text "New!" and two bullet points: "ORIA is hosting several small business roundtables 'Making State Government Work Better for You'. Click [here](#) for more information." and "ORIA has released their [Performance Report](#) for the last biennium." Below this is a large blue section with the text "Guiding you through Washington state's regulations. Our service is free and we are ready to help." and three buttons: "Text / SMS (via phone)", "Chat with actual person (via browser)", and "Email (via web form)". A live chat window is overlaid on the right side, titled "Live Chat Actual Person". The chat window shows a message from "ORIA Information Center" asking "How can we help you?" and a response from the user: "Are you having trouble finding something? Perhaps we can help." The chat window also has a text input field and a "Type a message here..." placeholder.

RFA – SBEIS Guidance Documents - https://www.oria.wa.gov/site/alias_oria/3190/Guidance-Documents.aspx

- [Attorney General's RFA Guidance](#)
- [RFA SBEIS Decision Tree -- \(shown below\)](#)
- [RFA Exemption List -- \(example below\)](#)
- [SBEIS Guidance 2019 -- \(example below\)](#)
- [Cost-Benefit Analysis Decision Tree](#)
- [Rule Review and Approval Form](#)
- [SBEIS and CBA Checklist](#)
- [SBEIS Template](#)
- Sample SBEIS analyses prepared by various agencies:
 - o [Department of Ecology- Water Quality Permit Fees](#)
 - o [Department of Fish and Wildlife- HPA Suction Dredge](#)
 - o [Washington State Department of Agriculture-Quarantine, Agricultural Pests](#)

RFA SBEIS DECISION TREE (example):

Is a Small Business Economic Impact Statement (SBEIS) Needed?-Chapter 19.85 RCW



RFA EXEMPTION LIST (example):

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	(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.	Can be used unless an agency receives a written objection. <i>*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.</i>
	34.05.353	(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.	
Are emergency rules	19.85.025	(3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).	
	34.05.310	(4)(a) Emergency rules adopted under RCW 34.05.350.	
Relate only to internal governmental operations	19.85.025	(3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).	
	34.05.310	(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	(3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).	Adopting a process already established-this rule incorporates by reference another state rule that has already been analyzed under previous rulemaking.
	34.05.310	(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.	
Make typographical or clarifying changes without changing the effect	19.85.025	(3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).	Correcting typos, language, clarifying definitions...as long as the changes <u>do not</u> change the effect of the rule.
	34.05.310	(4)(d) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.	
Have content explicitly dictated by statute	19.85.025	(3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).	Include what statute is dictating.
	34.05.310	(4)(e) Rules the content of which is explicitly and specifically dictated by statute	
Set or adjust fees or rates according to legislative standards	19.85.025	(3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).	<i>*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.</i>
	34.05.310	(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.	
Relate to the process of agency hearings or	19.85.025	(3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).	

SBEIS GUIDANCE 2019 (example):

How to Determine If A Small Business Economic Impact Statement Is Required

In adoption of a rule under the Administrative Procedure Act, chapter [34.05 RCW](#), the Department of Health, including its health profession boards and commissions, or the State Board of Health may be required to prepare a significant legislative rule analysis (SA) and/or a small business economic impact statement (SBEIS).

It is important to note that not all proposed rules require a SBEIS. Certain exemptions may apply and eliminate the need for a SBEIS. Typically a SBEIS will not be required unless an SA is also required. The SA should be drafted first; the results can then be used to determine if a SBEIS is required. The department has templates for both the SA ([SA Template](#)) and SBEIS ([SBEIS Template](#)) which need to be used when completing the analyses.

Once the SA is drafted the first and most important question is “Do we need to have a SBEIS for the rule package?”

The legislature finds that administrative rules adopted by state agencies can have a disproportionate impact on the state's small businesses because of the size of those businesses. This disproportionate impact reduces competition, innovation, employment, and new employment opportunities, and threatens the very existence of some small businesses. The legislature therefore enacted the Regulatory Fairness Act, chapter [19.85 RCW](#), with the intent of reducing the disproportionate impact of state administrative rules on small business. The Regulatory Fairness Act requires agencies that adopted rules under chapter 34.05 RCW to prepare a SBEIS if the proposed rule will impose more than minor costs on businesses in an industry, or if requested to do so by the joint administrative rules review committee.

What to ask when determining if a SBEIS is required.

