Impacts of Significant Legislative Rulemaking Requirements (2012-2013)

(Prior reports titled: Regulatory Reform under ESHB 1010)

Office of Financial Management and
Office for Regulatory Innovation and Assistance
State of Washington

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Regulatory Reform Under ESHB 1010

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Introduction

Significant legislative rules are defined in RCW 34.05.328 as rules that (1) adopt substantive provisions of law, the violation of which results in a penalty or sanction, (2) establish or change qualifications for a license or permit, or (3) result in a significant change to a policy or regulatory program.

Significant legislative rulemaking requirements include that agencies determine the costs and benefits of a new rule, determine least burdensome alternatives, coordinate regulations with the requirements of state and federal law, and develop an implementation, evaluation, and education plan. A copy of RCW 34.05.328 is attached to this report.

RCW 34.05.328(6) requires the Office of Regulatory Assistance, recently renamed the Office for Regulatory Innovation and Assistance (ORIA), to report on the experience of the named regulatory agencies in carrying out these rulemaking requirements. The current report was prepared by ORIA, an office administered by the Governor's Office and housed within OFM. In preparing the report, ORIA consulted with state agencies and also solicited comments from business and environmental and labor organizations as well as from the Association of Washington Cities and the Washington State Association of Counties.

Agencies required to report include:

- Department of Ecology (ECY),
- Department of Fish and Wildlife (DFW),
- Department of Health (DOH),
- Department of Labor and Industries (L&I),
- Department of Natural Resources (DNR),
- Department of Revenue (DOR),
- Department of Social and Health Services (DSHS),
- Employment Security Department (EDS),
- Forest Practices Board (FPB), and
- Office of the Insurance Commissioner (OIC).

ORIA received written reports from each of the required agencies. DFW and DNR reported no adoption of significant legislative rules and, therefore, no impacts over the last two years. The reports explain the agencies' experiences with significant legislative rulemaking for calendar years 2012 through 2013. They address the requirements for the overall report from ORA as set forth at RCW 34.05.328(6):

(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.

A copy of each agency's report is included in the appendix.

Types of Rules; Impacts of Process on Substance of the Rules

Agencies adopted 300 rules under the significant legislative rulemaking requirements from 2006 through 2009. Topic areas for these rules were quite varied. A sampling of rules or topics from the various agencies is shown below. See the individual agency reports for the full listing.

Department of Ecology
16 significant legislative rules adopted. Sample topics included:

- Low emission vehicles
- Better brakes
- Oil spill contingency planning and natural resource damage assessment
- State Environmental Policy Act rules
- Underground storage tanks
- Municipal solid waste landfills
- Dungeness water resources management program

Department of Health
13 significant legislative rules adopted. Sample topics included:

- Animal control
- Dental anesthesia assistant
- Home care aides
- Medical assistants
- Naturopaths
- Prescription monitoring
- Public water systems
- Reflexology

Department of Labor and Industries
9 significant legislative rules adopted.
Sample topics included

- Retrospective Rating
- Heat Related Illness
- Formaldehyde Rules
- Self Insurance Continuing Education

Department of Revenue
3 significant legislative rules adopted. Topics:

- Business license service – total fee payable – handling of fees
- Financial institutions - income apportionment
- Timber Excise Tax – Stumpage Value Tables

Department of Social and Health Services
3 significant legislative rules adopted. Topics:

- Behavioral health agency requirements
- Rules for the certification of outpatient mental health, chemical dependency, and problem and pathological gambling services
- Shelters for domestic violence victims relating to crib safety

Employment Security Department
3 significant legislative rules adopted. Topics:
- Untimely or inadequate employer responses to DSHS written requests for information
- Penalty for employer with late quarterly wage reports
- Penalty for employers who omit required ownership information on registration form

Forest Practices Board
6 significant legislative rules adopted. Topics:
- Critical Habitats of threatened and endangered species
- Forest biomass
- Forest Practices hydraulic projects
- Forest Riparian Easement Program
- Land use conversions and Forest Practice Applications
- Notice of Forest Practices to Affected Indian Tribes

Office of the Insurance Commissioner
26 significant legislative rules adopted. Sample topics included:
- Data submission requirement for K-12 project
- Essential health benefits designation
- Market transition rules
- Open special enrollment
- Prescription drug benefit standards
- Property and casualty rate stability
- Unauthorized insurer

Agencies again commented that the requirements do add cost and time to the rule-making process, as noted in previous reports. Costs are typically absorbed within normal operations.

The Department of Health observed:
Costs of adopting significant legislative rules include staff and board and commission member time to develop the rule; preparation of cost-benefit analyses; public meetings (including workshops, rule drafting meetings, and formal hearings); some printing and postage; administrative costs; and, where appropriate, preparation of *small business economic impact statements or SBEIS* (two significant rules adopted in this period required both a cost-benefit analysis and a SBEIS). A large number of stakeholders or complex subject matter may require an increased number of

stakeholder meetings, which also increases costs.

The costs do not reflect the time and expense by public stakeholders to participate in rule development. To help manage costs, boards and commissions typically schedule rule development workshops and public rules hearings as part of their regular business meetings, but this is not always possible to efficiently adopt rules.

Inviting significant stakeholder participation in rule development is a core value of the department, State Board of Health and the related health profession boards and commissions. Although this level of public involvement increases the overall cost of rule making, those efforts tend to increase public acceptance of the rules.

The Department of Ecology noted that the significant legislative requirements do add cost and time to the rule-making process; however they promote analysis and deeper understanding of rule impacts. This supports Ecology's ability to fulfill its legislatively prescribed mission.

The Employment Security Department follows the same general rule-making processes whether the rules qualify as significant legislative rules or not. Preparation of the cost-benefit analysis and post-adoption coordination (if any) have not factored into the content of the final rules nor have they limited the ability of the department to meet its legislatively mandated mission.

Cost Impacts

Costs were reported by the agencies as follows. See their individual agency reports for additional detail.

Department of Ecology
Ecology does not track costs separately from other rule-making activities. Associated costs include preparing and reviewing documentation to meet the requirements, gathering data and other information, and other necessary tasks.

Department of Health
The Department, State Board of Health and the related boards and commissions spent $456,887 to develop the 13 significant rules. The average costs are lower than previous reporting periods.

	Average cost per DOH Rule Significant	"Non-Signif"
2012-2013	$35,145	$4,918
2010-2011	$40,867	$5,246

Department of Labor and Industries
L&I found additional costs in terms of dollars and staff analyzing costs requires a formal cost-benefit analysis, in addition to a small business economic impact statement. L&I required additional staff time of its economists and assistant attorney generals to develop and review these analyses.

Department of Revenue
Revenue routinely revises the one rule so costs are minimal and absorbed within normal operations.

Department of Social and Health Services
DSHS identified no additional costs other than staff time, mailing costs for stakeholder outreach, and conducting cost benefit analysis. Costs were absorbed within normal operations.

Employment Security Department
ESD found the costs of complying are minimal.

Forest Practices Board
Forest Practices Board did not quantify cots, reporting that additional costs were associated with staff time in planning and implementing the requirements.

Office of the Insurance Commissioner
The OIC reported costs of $210,000 per year. Because the analysis must be done on each rule, staff time for rule making increased after the law was enacted. The Commissioner hired a full time economic policy analyst to perform the required cost-benefit analysis. Additional staff analysts are also required, because the time to complete rule making is longer due to the additional steps.

OIC eliminated U.S. mailing of rule filings in 2011. Using electronic distribution through OIC list-serve and email to regulated industry contacts and interested stakeholders reduced these costs to nearly zero.

Legal Actions

No agency faced legal action for failure to comply with the requirements of RCW 34.05.328 for procedural violations of the Administrative Procedures Act.

Adverse Effects

There have been no significant adverse effects substantially affecting agency capacity and mission. While compliance with RCW 34.05.328 may add some time and cost, most agencies, reported that overall, the increased outreach resulting from compliance enhances the legislative process. Technique such as templates, list serves, and other tools are proving effective in reducing costs and streamlining involvement.

DOH noted that the length of time to adopt significant rules can be frustrating to stakeholders, board and commission members, and to the program staff members working on the rules. This frustration is particularly true for rules that by definition are significant legislative rules, but are not controversial or costly to the regulated public such as amending a rule to eliminate an obsolete requirement for obtaining a health professional license. Obtaining data may be difficult. Also, there are occasions when the department is unable to quantify the benefits of the rule because estimating costs requires information that the department cannot obtain without extensive and costly studies.

OIC reported three impacts:

1. *Increased Time to Complete Rule Development and Adoption*:
2. *Reduced Ability to Respond to Changing Circumstances*
3. *Limits on Number of Rules under Development*

Rule Acceptability

Most agencies reported no information regarding changes in the acceptability of agency rules resulting from the requirements of RCW 34.05.328. Most agencies noted positive feedback from their regulated community. For example:

- Ecology found that providing the public more detail about information used in rule-making decisions helps interested parties understand why Ecology drafted the rule the way they did.
- Health believes anecdotal evidence from public comments about proposed rules suggests that stakeholders appreciate the department's efforts to communicate with and include them in rule development. In some instances, the department has amended preliminary cost-benefit analysis to provide clarity or incorporate additional data.

- The Department of Labor and Industries has not detected any changes in acceptability of the agency's rules by the regulated community based solely on RCW 34.05.328.
- The Employment Security Department has not found a measurable increase or decrease in the acceptability of adopted rules on those regulated.
- The Forest Practices Board noted that the process increased the information available to the regulated community, which results in more specific comments from stakeholders and a better understanding of the decision-making by the agency.
- The Office of Insurance Commissioner reported that acceptance of rules by those regulated has been improved due to the attitude and approach of Office staff.

Stakeholder Comments

ORIA offered Association of Washington Business, Association of Washington Cities, Future wise, Independent Business Association, National Federation of Independent Business, the Nature Conservancy, Washington Environmental Council, Washington State Association of Counties, and the Washington State Labor Council opportunity to comment in the significant legislative rule-making.

The Independent Business Association commented, providing detailed background on the rule-making process and offered the following recommendation:

Given the job creation and economic benefits of small businesses, IBA recommends the following with respect to significant legislative rules and rulemaking in general.

- *Agencies need to continue to comply with RCW 34.05.328 to ensure that small business economic impacts statements are prepared for significant legislative rules.*
- *Agency rule writers must be made aware of the myriad of government rules and regulations that currently apply to small businesses in Washington State. Training should be conducted by the ORIA and be required by each person who drafts any state rule that affects small businesses in an industry. This training is necessary so that an agency rule-writer does not propose a requirement on a small business that is inconsistent with a requirement proposed by some other federal, state or local agency. IBA will be happy to assist the ORIA to prepare such training.*
- *The ORIA should provide data resources and training for state agencies on how to cost effectively prepare a small business economic impact statement and also prepare a cost-benefit analysis required by RCW 34.05.328.*
- *Agencies should be instructed by the Governor and OFM to prepare small business economic impact statements on rulemakings that are non-significant as well as those that are significant.*
- *There is no notation in a state agency proposed rulemaking as to whether the agency has identified the rule as a significant rulemaking. IBA strongly recommends that this notification be required with any proposed rulemaking.*

Other Information from Agencies

The Department of Ecology shared specific examples of how compliance with this section is valuable to the agency's rule-making process. Ecology developed templates to achieve transparency with stakeholders and interested parties, to standardize preparation and presentation of rule information, including information related to the requirements in RCW 34.05.328. Interested parties have shown an increased interest in viewing the rule-making documents and more awareness of the types of information they contain. Specific comments received from interested parties help Ecology understand the nature of their concerns and find ways to engage them in the rule-making process. These conversations may lead to language changes Ecology incorporates into the final rule adoption.

The Department of Revenue noted that the standard rulemaking process is sometimes complex and can be a long process for some of the rules adopted by the Department. Because of the length of time, the Department often relies on other interpretive documents to provide timely information to taxpayers and Department employees. The interpretive documents are later rolled into the revised rule.

The Department of Health and the Department of Social and Health Services pointed out that although not legally required, the DSHS process includes having significant legislative rules reviewed by a small number of internal and external stakeholders before the rules are formally proposed on a Proposed Rule Making notice. For rules that meet the significant legislative rule requirements, applicable economic analyses generally accompany the draft or are made available for review. Also not legally required, the DSHS process generally includes having permanent Rule Making Orders on all significant legislative rules signed by the DSHS Secretary, and review of these rules by an Assistant Attorney General before submission to the Secretary for approval and signature.

ESD commented that ESD follows the same general rule-making processes whether the rules qualify as significant legislative rules or not. Preparation of the cost-benefit analysis and post-adoption coordination (if any) have not factored into the content of the final rules nor have they limited the ability of the department to meet its legislatively mandated mission.

The Office of the Insurance Commissioner noted that RCW 34.05.328 probably improves rule quality for agencies that do not engage in rulemaking as a regular practice, because the analysis it requires supports the development of good rules. OIC has a goal to increase the use of the relevant and most reliable data to support our initial assessment of rule proposals, so that rules reflect what we learn from the data. This supports the agency mission because the Commissioner regulates to both protect consumers and ensure a financially sound insurance marketplace in Washington.

APPENDIX
RCW 34.05.328
Significant legislative rules, other selected rules.

(1) Before adopting a rule described in subsection (5) of this section, an agency shall:

(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 shall include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis shall 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 shall 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 shall place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan shall 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 shall do all of the following:

(a) Provide to the *business assistance center a list citing by reference the other federal and state laws that regulate the same activity or subject matter;

(b) 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)(b), the agency shall report to the legislature pursuant to (c) of this subsection;

(c) 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, 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;

(vi) Rules that set or adjust fees or rates pursuant to legislative standards; or

(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.

(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 shall 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 financial management, after consulting with state agencies, counties, and cities, and business, labor, and environmental organizations, shall report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report shall 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.

[2003 c 165 § 2; 2003 c 39 § 13; 1997 c 430 § 1; 1995 c 403 § 201.]

NOTES:

Reviser's note: *(1) The business assistance center and its powers and duties were terminated
June 30, 1995. RCW 43.31.083, 43.31.085, 43.31.087, and 43.31.089 were repealed by 1993 c 280 § 81, effective June 30, 1996.

(2) This section was amended by 2003 c 39 § 13 and by 2003 c 165 § 2, 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).

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 § 1.]

Application -- 1995 c 403 §§ 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 § 1102.]

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.
Expedited adoption: RCW 34.05.353.

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December 6, 2013

Anne Knapp, AICP
Regional Lead
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Dear Ms. Knapp:

Thank you for this opportunity to comment on the ORIA report on the Significant Legislative Rulemaking process in Washington State. We offer the following:

Observations and Comments

- Agency rules are one of the biggest challenges faced by small businesses. According to the federal U.S. Small Business Administration's Office of Advocacy. Agency rules and regulations cost firms with fewer than 20 employees pay $10,585 per employee on average to comply with. The regulatory burden is 36% greater on small firms than on their larger business counterparts. In addition, the cost to small businesses of tax compliance is over 300 percent greater per employee than the cost to large companies.[1]
- According to the U.S. Small Business Administration Office of Advocacy, small businesses are creating 63% of the new jobs in this recovering economy in 2012 and 2013. Small businesses have historically created about 67% of the new jobs. Clearly, the rate of small business job creation has been reduced in recent years when the state and nation need improved job creation.[2]
- The regulatory burden on small businesses is overwhelming. IBA estimates that when an average small business owner with employees opens his/her business each day, the business owner has over 100,000 federal, state, and local regulations to comply with that are imposed by 59 sets of rules and regulations imposed by 29 different federal, state and local agencies.
    - There is no one person at any level of government who knows all of the regulations and how to comply. Most people in government cannot even identify all of sets of rules and regulations a small business owner must comply with.
    - Yet a small business owner is expected to know all of the rules and regulations and how to comply or be cited and fined for non-compliance.
    - It is humanly impossible for a small business owner not to be in violation of some federal, state or local regulation almost every day.
- IBA is aware of a number of situations where one government agency required the business owner to do one thing, and another government agency cited the business for doing what the first government agency required the business to do. This is totally unacceptable and must be corrected.
- Given the significant job creation and economic benefits of small businesses, in 1982, the Washington State Legislature adopted the Washington State Regulatory Fairness Act patterned after the 1980 federal Regulatory Flexibility Act. The purpose of those acts was to protect the job creation and economic benefits of small

businesses by not imposing excessive and disproportionate costs of complying with government rules and regulations on small businesses. Both the federal and state regulatory fairness (flexibility) acts require an agency proposing an agency rule or regulation to assess the economic impact of the rule on affected small businesses and compare that impact to larger businesses affected by the same rule and to include provisions in the rule to eliminate or minimize any disproportionate economic impact on small businesses.

- Unfortunately, IBA is aware that many federal and state government agencies go through the motions of preparing a small business economic impact statement for a rulemaking but often the quality of such small business economic impacts statements is quite low and fail badly to accurately define the economic impacts of a rule on affected small businesses, and the agencies do even less to mitigate any adverse impacts.
- Clearly, based on the agency reports to the ORIA and the research done by IBA. the significant rulemaking process is extremely inconsistent in identifying rules that have a significant impact on small businesses in Washington State. For example:
    - IBA looked at the rules proposed and adopted by the Department of Ecology in 2012 and 2013.
        - According to the Washington State Register, Ecology proposed at total of 23 new or amended rulemakings in 2012-2013.
        - According to the Washington State Register, Ecology adopted 16 new or amended rulemakings in 2012-2013. Some of the rulemakings approved by Ecology in 2012 were originally proposed in 2011.
        - According to their report to ORIA, Ecology identified 16 of their 23 rulemakings as significant.
        - Ecology prepared a small business economic impact statement on 10 of their rulemakings most of which were significant rulemaking.
        - Ecology did not prepare small business economic impact statements on rulemakings that did not apply to small businesses.
        - Ecology appeared to prepare small business economic impacts statements on some non-significant rulemakings.
    - IBA looked at the rules proposed and adopted by the Department of Labor and Industries in 2012 and 2013.
        - According to the Washington State Register, the Department of Labor and Industries proposed at total of 37 new or amended rulemakings in 2012-2013.
        - According to the Washington State Register, the Department of Labor and Industries adopted 16 new or amended rulemakings in 2012-2013. Some of the rulemakings approved by Labor and Industries in 2012 were originally proposed in 2011.
        - According to their report to ORIA, the Department of Labor and Industries identified 18 of their 37 proposed rulemakings as significant.
        - It appears that the Department of Labor and Industries only prepared a small business economic impact statement on their significant rulemakings.
        - The Department of Labor and Industries did not appear to prepare small business economic impact statements on its non-significant rulemakings.
    - IBA looked at the rules proposed and adopted by the Department of Revenue in 2012 and 2013.
        - According to the Washington State Register, the Department of Revenue proposed at total of 17 new or amended rulemakings in 2012-2013.
        - According to the Washington State Register, the Department of Revenue adopted 22 new or amended rulemakings in 2012-2013. Some of the rulemakings approved by the Department of Revenue in 2012 were originally proposed in 2011.
        - According to their report to ORIA, the Department of Revenue identified 3 of their 17 proposed rulemakings as significant.
        - It appears that the Department of Revenue did not prepare a small business economic impact statement on any of their proposed rulemakings or significant rulemakings.
        - Several of the Department of Revenue rulemakings had significant impacts on a significant number of small businesses and state laws require that they should have had a small business economic impact statement prepared for those proposed rulemakings.

- According to the Washington State Code Reviser, since 2000 , state agencies adopted 57628 new or amended state rules, repealed 19819, for a ratio of about 3:1 new or amended rule to every repealed rule. That is an additional 57628 new sets of requirements, many of which will affect small businesses and that affected small businesses must figure out what is required, and how to comply. **That is 17.6 new or amended rules adopted for each 8 hour workday, or 2.2 new or amended rules for a small business owner to research every hour of every 8-hour workday.**
- One agency claimed that the significant rulemaking requirements increased the cost of their rulemaking by 700% but provided little support for their statement. Other agencies indicated that the significant rulemaking requirements did add cost but did not provide any specifics. Other agencies did not find the significant rulemaking process to be problematic and indicated the costs to comply were "minimal."
- None of the agencies indicated that the significant legislative rules process adversely affects its ability to fulfill its legislatively prescribed mission.

Recommendations:

- Given the job creation and economic benefits of small businesses, IBA recommends the following with respect to significant legislative rules and rulemaking in general.
  - Agencies need to continue to comply with RCW 34.05.328 to ensure that small business economic impacts statements are prepared for significant legislative rules.
  - Agency rule writers must be made aware of the myriad of government rules and regulations that currently apply to small businesses in Washington State. Training should be conducted by the ORIA and be required by each person who drafts any state rule that affects small businesses in an industry. This training is necessary so that an agency rule-writer does not propose a requirement on a small business that is inconsistent with a requirement proposed by some other federal, state or local agency. IBA will be happy to assist the ORIA to prepare such training.
  - The ORIA should provide data resources and training for state agencies on how to cost effectively prepare a small business economic impact statement and also prepare a cost-benefit analysis required by RCW 34.05.328.
  - Agencies should be instructed by the Governor and OFM to prepare small business economic impact statements on rulemakings that are non-significant as well as those that are significant.
  - There is no notation in a state agency proposed rulemaking as to whether the agency has identified the rule as a significant rulemaking. IBA strongly recommends that this notification be required with any proposed rulemaking.

Respectfully submitted:

Gary Smith
Executive Director
360-485-3336

1. "The Impact of Regulatory Costs on Small Firms" -- from the SBA's Office of Advocacy – September 2010
2. "Small Business Employment: Third Quarter 2013" U.S. Small Business Administration Office of Advocacy November 4, 2013

DEPARTMENT OF ECOLOGY
State of Washington

Report of Impacts of Significant Legislative Rule Making

Introduction.

Revised Code of Washington (RCW) 34.05.328(6) requires the Office for Regulatory Innovation and Assistance (ORIA) to report to the Governor and the Legislature in January of each even-numbered year. The report must address how agencies implement significant legislative rule-making requirements as defined in chapter 34.05 RCW. To prepare this report ORIA asks agencies to submit information to them about significant legislative rule-making in the agencies.

This report includes:

- A description of significant legislative rules, proposed and adopted by Ecology between January 1, 2012 and December 31, 2013.
- A description of how Ecology's compliance with RCW 34.05.328 affected the substance of rules adopted.
- A summary of the costs incurred by Ecology in complying with RCW 34.05.328.
- Description of any legal actions against Ecology for failure to comply with RCW 34.05.328, costs of such actions, and the status or outcome of the action.
- The extent to which significant legislative rule-making requirements have adversely affected Ecology's ability to fulfill its legislatively prescribed mission.
- Descriptions of how these requirements have improved the acceptability of these rules by the regulated community.
- A summary of comments from interested parties on the impacts of the significant legislative rule-making requirements.

Significant Legislative Rule-making Activities.

January 1, 2012 – December 31, 2013

Not all changes or proposals of new rule language are considered a significant legislative rule. Rule-making activities can involve a combination of any of the following: significant changes, clarifications, incorporation by reference of federal standards, correction of typos, etc.

Ecology tracks "significant legislative rule making" by rule-making activity and chapter, not by sections within a chapter. If only one section in a rule making included significant legislative changes, the entire rule making is included in this report. Therefore, the required section count includes all sections in a rule-making activity, not just those sections that had significant legislative changes.

Below is a description of significant legislative rule-making activities proposed and adopted, by Ecology between January 1, 2012 and December 31, 2013.

Significant Legislative Rule Makings
Adopted between January 2012 and December 2013

Ecology completed 16 significant legislative rule-making activities related to 16 Washington Administrative Code (WAC) chapters (268 sections - 159 amended sections, 107 new sections, and 2 repealed sections).

Program		Adoption Date	*WAC Chapter*	*Chapter Title*	*Number of sections*
Air Quality	1	11/28/12	173-400	General Regulation for Air Pollution Sources	29 Amended
	2	11/28/12	173-423	Low Emission Vehicles	10 Amended
	3	11/30/12	173-455	Air Quality Fee Rule	6 Amended 1 Repeal 1 New
Hazardous Waste And Toxics Reduction	**4**	10/19/12	173-901	Better Brakes	18 New
Spill Prevention, Preparedness, and Response	**5**	12/14/12	173-182	Oil Spill Contingency Planning	38 Amended 1 Repeal 12 New
	6	12/14/12	173-183	Oil Spill Naturual Resource Damage Assessment	11 Amended

Program		Adoption Date	*WAC Chapter*	*Chapter Title*	*Number of sections*
Shorelands and Environmental Assistance	**7**	12/28/12	197-11	SEPA Rules	4 Amended
Toxics Cleanup	**8**	2/25/13	173-204	Sediment Management Standards	20 Amended 6 New
	9	8/8/12	173-360	Underground Storage Tank Regulations	2 Amended 13 New
Waste 2 Resources	**10**	10/22/13	173-334	Children's Safe Products – Reporting Rule	1 Amended
	11	3/25/13	173-350	Solid Waste Handling Standards	4 Amended 2 New
	12	11/16/12	173-910	Mercury-Containing Lights Product Stewardship Program	23 New
	13	11/8/12	173-351	Criteria for Municipal Solid Waste Landfills	29 Amended 1 New
Water Resources	**14**	2/27/12	173-175	Dam Safety	5 Amended
	15	11/16/12	173-518	Water Resources Management Program for the Dungeness Portion of the Elwha-Dungeness Water Resources Inventory Area (WRIA) 18	18 New
	16	11/28/12	173-165	Certified Water Right Examiners	13 New

Significant Legislative Rule Making - Proposals
Not adopted by November 2013

Ecology also has one rule-making activity where we have proposed rule language and anticipate adoption in 2013. There are two activities where we anticipate proposing rule language by the end of 2013 with adoption anticipated in 2014. Ecology has not adopted the rules in the table below at the time of the report; therefore a final section count is not included.

Program		Filing Information	*WAC Chapter*	*Chapter Title*
Air Quality	**1**	Proposal filed: 8/6/13 Adoption anticipated: November 2013	173-470 *Repeal*	Ambient Air Quality Standards for Particulate Matter
			173-474 *Repeal*	Ambient Air Quality Standards for Sulfur Oxides
			173-475 *Repeal*	Ambient Air Quality Standards for Carbon Monoxide, Ozone, and Nitrogen Dioxide
			173-476 *Adoption*	Ambient Air Quality Standards
	2	Anticipated Proposal (CR-102): December 2013 Anticipated Adoption: 2014	173-485 *Adoption*	Green House Gas Refinery RACT
Shorelands and Environmental Assistance	**3**	Anticipated Proposal (CR-102): December 2013 Anticipated Adoption: Early 2014	197-11 *Adoption*	SEPA Rules
			173-806 *Adoption*	Model Ordinance (SEPA)
			197-06 *Repeal*	Public Records (for Council on Environmental Policy)

Affect on Rule Substance.

A description of how Ecology's compliance with RCW 34.05.328 affected the substance of rules adopted.

Ecology found compliance with this section valuable to the rule-making process. RCW 34.05.328 (1) requires Ecology make several determinations related to the rule prior to adoption. RCW 34.05.328 (2) requires agencies to place in the rule-making file "documentation of sufficient quantity and quality" to support the determinations. Consideration of the information gathered for these requirements, along with relevant science and input from interested parties, ensures an enhanced decision-making process.

To achieve transparency with stakeholders and interested parties, we developed templates to standardize preparation and presentation of rule information, including information related to the requirements in RCW 34.05.328. Interested parties have shown an increased interest in viewing

the rule-making documents and more awareness of the types of information they contain. Specific comments received from interested parties help Ecology understand the nature of their concerns and find ways to engage them in the rule-making process. These conversations may lead to language changes Ecology incorporates into the final rule adoption.

Compliance costs.

Summary of the costs incurred by Ecology in complying with RCW 34.05.328.

Ecology does not track the costs associated with these requirements separately from other rule-making activities. Costs associated with complying with this section include but are not limited to:

- Preparing and reviewing documentation to meet the requirements.
- Gathering data and other information.
- Other necessary tasks.

Legal Actions.

Description of any legal actions against Ecology for failure to comply with RCW 34.05.328, costs of such actions, and the status or outcome of the action.

No legal actions against Ecology for failure to comply with RCW 34.05.328 were filed between January 1, 2012 and the time this report was written.

Capacity to Fulfill Agency Mission.

The extent to which significant legislative rule-making requirements have adversely affected the capacity of Ecology to fulfill its legislatively prescribed mission.

The significant legislative requirements do add cost and time to the rule-making process; however they promote analysis and deeper understanding of rule impacts. This supports Ecology's ability to fulfill its legislatively prescribed mission.

Rule Acceptability.

The extent to which RCW 34.05.328 has improved the acceptability of state rules to those regulated.

Because of these requirements, Ecology provides the public more details about information used in rule-making decisions. This helps interested parties understand why Ecology drafted the rule the way we did which we believes improves the acceptability of state rules.

The department reported that:

- ✓ There were no Significant Legislative Rules adopted in 2012
- ✓ There were no Significant legislative Rules adopted in 2013
- ✓ WDFW filed a CR-101 in 2013 for a rulemaking project that involves Significant Legislative Rules, to be completed ruing 2014.

Significant Legislative Rule Making Report

January 1, 2012 – December 31, 2013

For more information or additional copies of this report contact:

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John Wiesman, DrPH, MPH
Secretary of Health

Introduction

In 1995, the Washington State Legislature required certain state agencies, including the Department of Health, to apply a cost-benefit analysis when making rule changes that:

- Adopt substantive provisions of law in accord with delegated legislative authority, the violation of which subjects a violator to a penalty or sanction;
- Establish, alter, or revoke any qualification or standard for issuance, suspension, or revocation of a license or permit; or
- Adopt a new, or make significant amendments to, a policy or regulatory program.

Under the 1995 law, when proposing a significant legislative rule, the agency must analyze the rule's probable quantitative and qualitative costs and benefits. It must make a finding that the likely benefits exceed the probable costs. The agency must also show that the proposed rule is the best choice among the other alternatives. Agencies must make a preliminary cost-benefit analysis available to the public when a proposed significant rule is filed for formal comment. A final cost-benefit analysis must be available to the public when the permanent rule is adopted.

This biannual report describes the proposed and adopted significant legislative rules filed with the Code Reviser from Jan. 1, 2012 through Dec. 31, 2013 by the Department of Health (department), the State Board of Health, and the 17 health professions boards and commissions with independent rule making authority. Rulemaking was in compliance with Executive Order 10-06 and Executive Order 11-03, which imposed a suspension for non-critical rule making activities. The department, State Board of Health, and the health professions boards and commissions count rule making activities by topic, not by the number of rule sections. This report includes the 13 significant legislative rules adopted and filed with the Code Reviser from Jan. 1, 2012 through Oct. 23, 2013. Appendix A is a listing of proposed significant legislative rules that are anticipated to be adopted between Oct. 24, 2013 and Dec. 31, 2013, and early cost estimates associated with each rule.

Department staff members develop and implement the rules adopted by the health professions boards and commissions, along with most rules adopted by the State Board of Health, as well as rules adopted under the Secretary of Health's authority. These rules are located in Title 246 of the Washington Administrative Code (WAC). This report also describes:

- The costs of adopting significant legislative rules;
- Legal actions regarding significant legislative rules during this period;
- Any adverse effects of the significant legislative rule making requirements;
- The effect of significant rule requirements on public acceptance of the rules; and
- Stakeholder comments about the significant rule making process.

Table 1 describes the significant legislative rules adopted, and filed with the Code Reviser during this period by: adopting authority, WAC chapter and general subject matter, number of WAC sections impacted, rule adoption date, and the cost of adopting each rule.

Table 1. Significant Legislative Rules Adopted and Filed With the Code Reviser – Jan. 1, 2012 through Oct. 23, 2013

Source: Department of Health Official Rule Making Files

Department of Health

RCW or Session Law	Authority	WAC and Rule Title	# of WAC Sections		Rule Adoption Date	Rule Cost
			Proposed (CR-102)	Adopted (CR-103)		
RCW 18.36A.160 HB 1181 (Chapter 41, Laws of 2011) SSB 5152 (Chapter 40, Laws of 2011)	Board of Naturopathy	Chapter 246-836 WAC Naturopaths. Amended sections to change the regulatory authority for naturopaths from the Department of Health to the Board of Naturopathy, updated the scope of practice, made general housekeeping changes, and amended requirements to approve naturopathic medical education institutions.	27	27	06/20/12	$7,574
RCW 18.64A.020	Board of Pharmacy	WAC 246-901-061 Pharmacy Technician Certification. Added new rules to establish continuing education (CE) requirements for pharmacy technicians.	1	1	07/31/12	$1,296
RCW 69.41.080	Board of Pharmacy	Chapter 246-886 WAC Animal Control – legend drugs and controlled substances, and WAC 246-887-050, 060, and 070 Pharmacy – Regulations implementing the Uniform Controlled Substances Act. Amended rules relating to the registration of humane societies and animal control agencies authorized to use approved legend drugs and sodium pentobarbital. The rule updated euthanasia core training elements and established consistent standards for the administration, storage, and recordkeeping of prescription drugs and sodium pentobarbital. WAC 246-887-050, 060, 070 were repealed and the standards were added to Chapter 246-886 WAC.	11 Repeal 4	11 Repealed 4	10/23/2012	$11, 542
RCW 18.25.0171 18.130.050	Chiropractic Quality Assurance Commission	WAC 246-808-180 Expired Licenses for Chiropractors. Amended the requirements for reactivation of an expired chiropractic license.	1	1	03/13/13	$883
Chapter 18.350 RCW ESSB 5620 (Chapter 23, Laws of 2012) RCW 18.32.0365, 18.32.640, 18.130.040(14), 18.260.120	Dental Quality Assurance Commission	Chapter 246-817 WAC Dental Anesthesia Assistant. Amended the chapter to establish a new dental anesthesia assistant certification to implement ESSB 5620 (Chapter 23, Laws of 2012). Amendments also included adding dental assistants and expanded function dental auxiliaries to WAC 246-817-450, and WAC 246-817-460.	9	9	07/23/13	$7,262

RCW or Session Law	Authority	WAC and Rule Title	# of WAC Sections Proposed (CR-102)	# of WAC Sections Adopted (CR-103)	Rule Adoption Date	Rule Cost
RCW 70.225.025 & 70.225.020 SSB 6105 (Chapter 192, Laws of 2012)	Department of Health	WAC 246-470-010 (amend), WAC 246-470-030 (amend), and new WAC 246-470-035 Prescription Monitoring Program. Updated the rules to reflect 2012 changes in law. Adopted a new rule establishing alternative data reporting requirements to the Department of Health prescription monitoring program (PMP) for veterinarians dispensing controlled substances. The rules also clarify that for dispensers other than veterinarians, drugs dispensed for one-day use do not need to be reported to the PMP.	3	3	05/28/13	$2,246
Chapter 18.108 RCW ESSB 6103 (Chapter 137, Laws of 2012)	Department of Health	Chapter 246-831 WAC Reflexology. Created a new chapter for Reflexology, including the certification requirements for reflexologists as authorized by 2012 legislation.	10	10	05/31/13	$8,385
Chapter 18.360 RCW RCW 43.70.280 ESSB 6237 (Chapter 153, Laws of 2012) ESHB 1515 (Chapter 128, Laws of 2013)	Department of Health	Chapter 246-827 WAC Medical assistants. Created a new chapter for the implementation of four medical assistant credentials as authorized by 2012 and 2013 legislation, codified in part as chapter 18.360 RCW. Amended WAC 246-826-990 Health care assistant - fees and renewal cycle to establish procedures to transition previous health care assistant credentials to the new medical assistant credentials.	24	24	05/31/13	$45,842
RCW 18.84.040, 43.70.250 SHB 2340 (Chapter 92, 2010) 3ESHB 2127 (Chapter 7, Laws of 2012, 2nd Spec. Sess.)	Department of Health	Chapter 246-926 WAC Cardiovascular Invasive Specialist. Created licensure requirements for cardiovascular invasive specialists to implement 2010 and 2012 legislation.	6	6	05/02/12	$12,629
Chapter 18.88B RCW ESHB 2314 (Chapter 164, Laws of 2012) SHB 1629 (Chapter 259, Laws of 2013) Chapter 18.130 RCW	Department of Health	Chapter 246-980 WAC, Home Care Aides. Establish a scope of practice for all long-term care workers; clarified requirements for nurse delegation of duties to home care aides; and revise the rules for home care aide certification and exemption from certification. The rules implement 2012 and 2013 legislation. Also amended WAC 246-10-501 to allow use of the brief adjudicative proceeding for home care aide certification applicants and credential holders who are disqualified from working with vulnerable persons under chapter 74.39A RCW.	14	14	9/18/2013	$8,913
ESHB 2473 (Chapter 208, Laws of 2012)	Nursing Care Quality Assurance	WAC 246-841-586 through 595 Medication Assistant Endorsement. Established requirements for an optional medication assistant endorsement for nursing assistants-certified working in nursing homes.	10	10	07/08/13	$13,637

State Board of Health

RCW or Session Law	Authority	WAC and Rule Title	# of WAC Sections Proposed (CR-102)	# of WAC Sections Adopted (CR-103)	Rule Adoption Date	Rule Cost
RCW 43.20.050, 43.20.145	State Board of Health	**Chapter 246-215 WAC, Food Service.** Incorporated requirements from the 2009 version of the Food and Drug Administration (FDA) Food Code, and addressed gaps and overlaps in food safety for pre-schools.	447 Repeal 27	447 Repealed 27	01/17/13	$201,709
RCW 43.20.050 Chapter 70.119A RCW	State Board of Health	**Chapter 246-291 WAC Group B Public Water Systems regulations.** The 2009 Legislature eliminated Department of Health funding for the Group B program, rules were amended to reflect the funding loss. The Legislature also amended RCW 43.20.050 and chapter 70.119A RCW directing the State Board of Health to adopt rules to: establish minimum design and construction standards for Group B systems; allow the board to waive requirements for systems with fewer than five connections; and allow local governments to establish regulations that are more stringent than state standards.	21 Repeal 14	21 Repealed 14	12/04/12	$134,970

Gov. Chris Gregoire issued Executive Order 10-06 suspending all non-critical rule making activities in November 2010. She also issued Executive Order 11-03 extending the suspension on all non-critical rule making activities in October 2011. Before Gregoire's executive orders, changes in staff work load and available resources made it necessary for the department, state Board of Health, and the related boards and commissions to set priorities for their rule making efforts. The department, state Board of Health, and related boards and commissions adopted considerably less significant legislative rules compared to the previous reporting period because of the two-year rule making suspension. There were 13 compared to 41 in the previous reporting period. Patient safety and legislative mandates continue to be the highest priority.

The department, state Board of Health, and the related health profession boards and commissions have also adopted less rules using the expedited rule making process (three rules), the exception rule making process (22 rules), and rules that by definition are considered "not significant" (three rules). Fifteen rules were filed using the expedited process and 27 using the exception process in the previous reporting period.

There has also been a decrease in the number of emergency rules. Immediate adoption of the rules was necessary to preserve public health and safety. Four emergency rules were adopted during this time period, compared to ten during the previous reporting period.

The suspension of non-critical rule development ended Dec. 31, 2012. Since then the department, state Board of Health, and the related health profession boards and commissions are working to prioritize the back-log of rule making activities and initiate new rule making. Such activities include amending existing rules or adopting new rules to implement changes in national professional standards or consensus codes; changes in technology, including new products or equipment used by licensees or credential holders or regulated parties that improves outcomes or the quality of their work; changes in agency policy; requests for rule making by interested or regulated parties, such as professional associations; formal petitions; and changes in standards of practice or conduct.

Costs of Developing and Adopting Significant Legislative Rules

Significant legislative rules generally cost more to adopt than rules that are "not significant." The department, state Board of Health, and the related health profession boards and commissions spent $456,887 to develop the 13 significant legislative rules adopted from Jan. 1, 2012 through Oct. 23, 2013, compared with total costs of $137,701 to adopt 28 "non-significant" rules during the same period. The average cost per rule was $35,145 for significant rules, compared to $4,918 per rule for non-significant rules. Figures 1 and 2 illustrate these cost differences. The average cost to adopt both significant and non-significant rules decreased. The previous reporting period average costs were, for significant rules $40,867 and for non-significant rules $5,246.

Figure 1. Total Cost of Adopting Significant Rules Compared to Non-Significant Rules from January 1, 2012 through October 23, 2013

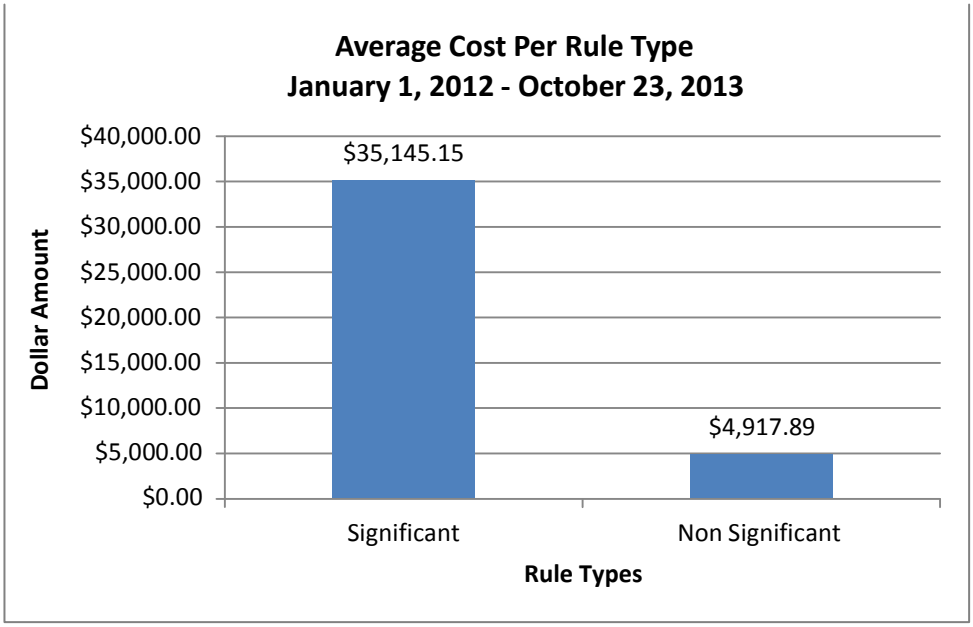
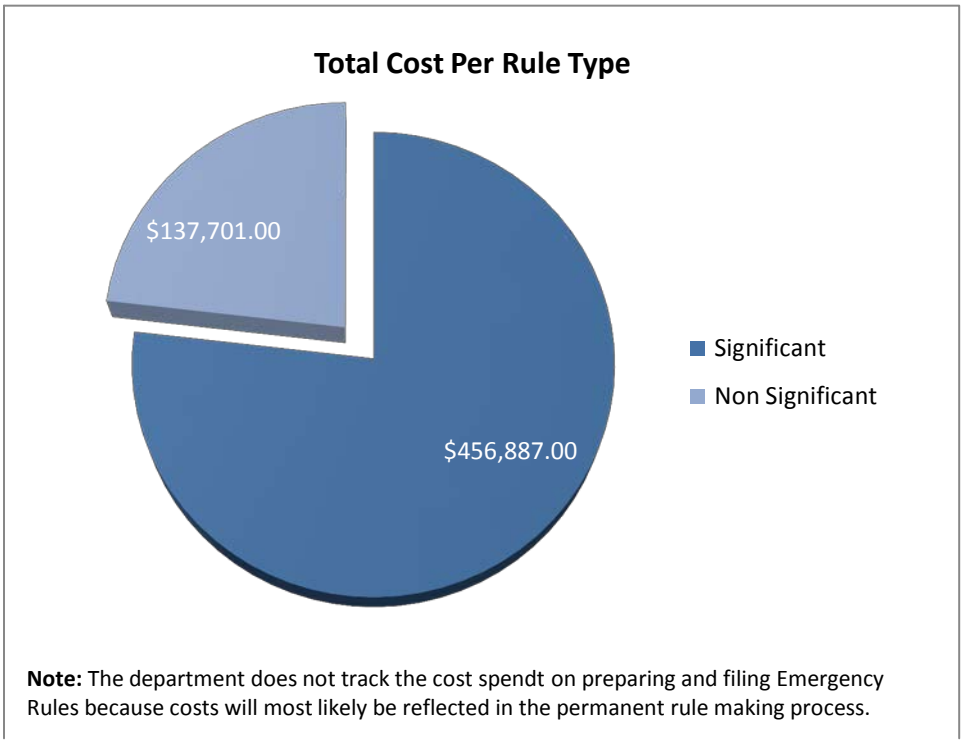


Figure 2. Average Cost of Adopting Significant Rules Compared to Non-Significant Rules from January 1, 2012 through October 23, 2013



The most costly rule, totaling $201,709, was the rule making for Washington's food safety rules. These rules are under the authority of the state Board of Health, but implemented by the department. RCW 43.20.145 requires the Board to consider the latest version of the Food and Drug Administration (FDA) Food Code in adopting Washington's state food safety rules. The previous rules were based on the 2001 FDA Food Code. Since then, the 2005 and 2009 FDA Food Code versions were published. The state rules were revised to reflect these new standards.

The state Board of Health also adopted new rules to address the gaps and overlaps in food safety rules and guidelines for various facilities responsible for providing meals for young children such as child care facilities and early learning programs. Other provisions of the rules were revised to clarify the intent.

The most noticeable change in the adopted rule is the incorporation of the FDA Food Code requirements in full, rather than adopting them by reference. In the past, staff created a "working document" that includes the FDA Food Code language adopted by reference. Local health agencies relied on the "working document" to cite violations during inspections. In some counties, this created difficulties with enforcement actions. Incorporating the FDA Food Code requirements in full provides clarity, improves usability, and is more efficient.

The Board of Health and the department worked with representatives from the Department of Early Learning, local health partners, and other interested stakeholders on this rule. Staff created a core workgroup to provide recommendations to the department. The department provided draft rule text to interested parties for informal review and comment using a variety of methods including posting on the Department of Health's website, briefing the state Board of Health, responding to e-mail requests, and publishing in the department's food safety newsletter. Four public meetings were held in various locations to share the proposed rule changes.

The state Board of Health delayed the effective date of these rules to allow the local health jurisdictions to adopt local ordinances and receive department training on the new requirements.

Costs of adopting significant legislative rules include staff and board and commission member time to develop the rule; preparation of cost-benefit analyses; public meetings (including workshops, rule drafting meetings, and formal hearings); some printing and postage; administrative costs; and, where appropriate, preparation of *small business economic impact statements or SBEIS* (two significant rules adopted in this period required both a cost-benefit analysis and a SBEIS). A large number of stakeholders or complex subject matter may require an increased number of stakeholder meetings, which also increases costs.

The costs do not reflect the time and expense by public stakeholders to participate in rule development. To help manage costs, boards and commissions typically schedule rule development workshops and public rules hearings as part of their regular business meetings, but this is not always possible to efficiently adopt rules.

Inviting significant stakeholder participation in rule development is a core value of the department, State Board of Health and the related health profession boards and commissions. Although this level of public involvement increases the overall cost of rule making, those efforts tend to increase public acceptance of the rules.

Legal Actions

There have been no legal actions alleging that the department, state Board of Health, and related health profession boards and commissions failed to comply with the significant legislative rule requirements of RCW 34.05.328 during this reporting period.

Adverse Effects of Compliance with the Regulation

There are few adverse effects of significant legislative rule making other than the costs as described above, and the increased time to develop and adopt a significant rule.

The average significant legislative rule can average 20 months to complete. Controversial rules may take longer. "Non-significant" rules can be completed on average in six months. This does not include the substantial staff effort and time leading up to filing a CR-101 or CR-102 notice, or the implementation efforts after the permanent rule making order is filed.

The length of time to adopt significant rules can be frustrating to stakeholders, board and commission members, and to the program staff members working on the rules. This frustration is particularly true for rules that by definition are significant legislative rules, but are not controversial or costly to the regulated public.

For example, amending a rule to eliminate an obsolete requirement for obtaining a health professional license qualifies the amendment as significant. The rule change may not create a cost to the regulated profession – sometimes a cost savings occurs – and the rule may have widespread support from the regulated profession. Yet RCW 34.05.328 requires that a cost-benefit analysis and other documentation be prepared before the rule is proposed, resulting in efforts, cost, and delay that are often perceived as unnecessary.

Other significant legislative rules require more complex analysis. The complexity may reflect the difficulty of obtaining data that sufficiently support the standard in the rule. Examples of data that are often difficult to obtain include the degree to which a standard is intended to alter public behavior, or the public health risk or benefit associated with a certain standard, such as requiring that prescriptions be filled in a timely manner for optimum efficacy. Data collection is a major component of a cost-benefit analysis. If data are clear and readily available, the analysis is easier to conduct. If data are not readily available, the department must devote additional staff time and resources to conduct literature reviews, surveys, or other research. The time and resources needed to complete the analysis can quickly increase the cost of the rule and delay its adoption.

There are occasions when the department is unable to quantify the benefits of the rule because estimating costs requires information that the department cannot obtain without extensive and costly studies.

Rule Acceptability and Stakeholder Comments

The department has no data to show public acceptability of the rules has increased or decreased as a result of the 1995 law. Anecdotal evidence from public comments about proposed rules suggests that stakeholders appreciate the department's efforts to communicate with and include them in rule development. However, this has been true for both significant rules and non-significant rules.

Stakeholders commenting on specific proposed rules have raised questions about the data and conclusions in the related preliminary cost-benefit analyses. In some instances changes have been made to amend the preliminary cost-benefit analyses to provide clarity or incorporate additional data.

Appendix A: Addendum to Significant Legislative Rule Making Report - January 1, 2012 through December 31, 2013

The following table addresses significant legislative rules by the Department of Health (department), state Board of Health, and the 17 related health profession boards and commissions for the time period of October 24, 2013 through December 31, 2013. Table A shows significant legislative rules the department, state Board of Health and the related health profession boards and commissions anticipate adopting and filing with the Code Reviser between October 24, 2013 and December 31, 2013, and the preliminary costs associated with each rule.

Table A. Significant Legislative Rules Anticipating Adopting and Filing with the Code Reviser - Between October 24, 2013 and December 31, 2013

RCW or Session Law	Authority	WAC and Rule Title	# of WAC Sections Proposed (CR-102)	Preliminary Cost of Rulemaking
Chapter 70.38 RCW Chapter 70.41 RCW	Department of Health	WAC 246-310-010 and WAC 246-320-141 Certificate of Need and Hospital Licensing Standards. In response to Governor Directive 13-12, the Department of Health proposed amendments to the Certificate of Need rules to address health care facility affiliations, corporate restructuring, mergers and other arrangements. These types of transactions would require prior CoN review by the department. This would ensure the community will not lose access to services as a result to the new organizational structure. The department is also proposing amendments to the hospital licensing rules to improve transparency for consumer information and the public's ease of access to hospital information.	2	$5,919
Chapter 70.119 RCW	Department of Health	Chapter 246-292 WAC, Waterworks Operator Certification. The Department of Health is proposing to incorporate changes from Substitute House Bill 1283 (Chapter 221, Laws of 2009), clarify the rule language, and update the rule to include department guidance and current program practices.	23	$215,193
RCW 43.70.422, 18.83.090 ESHB 2366 (Chapter 181, Laws of 2012) SHB 1376 (Chapter 78, Laws of 2013)	Examining Board of Psychology	WAC 246-924-230, WAC 246-924-240, and WAC 246-924-255 Continuing education requirements for psychologists. The proposed rules implement 2012 and 2013 legislation by creating new continuing education (CE) requirement for psychologists. The proposed rules establish CE requirements in suicide assessment, treatment and management, and provide clarification related to the topics that must be in an approved course.	3	$4,256

RCW or Session Law	Authority	WAC and Rule Title	# of WAC Sections Proposed (CR-102)	Preliminary Cost of Rulemaking
RCW 18.130.250, 18.79.110	Nursing Care Quality Assurance Commission	WAC 246-840-125 Registered Nurse and Licensed Practical Nurse Retired active status. Adopting a new rule establishing a retired active status credential for registered nurses and licensed practical nurses, and setting continuing competency requirements associated with this credential.	1	$2,334
RCW 70.83.050, 70.83.020	State Board of Health	Chapter 246-650 Newborn Screening. The rules add severe combined immunodeficiency (SCID) to the list of mandatory conditions for newborn screening conducted by the Department of Health. The State Board of Health adopted these rules at its October 16, 2013 board meeting. The Board anticipates filing the rules with the Code Reviser in November 2013.	3	$30,998

STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES

Legislative and Governmental Affairs Office PO Box 44001 ● Olympia, Washington 98504-4001

MEMORANDUM

November 8, 2013

TO: Jesus Sanchez, Director of Regulatory Assistance
Governor's Office

FROM: Suchi Sharma, Counsel for Executive Policy
Government Affairs and Policy Division
Department of Labor and Industries

SUBJECT: Significant Legislative Rules Report

As required by RCW 34.05.328, the enclosed report covers the Department of Labor and Industries' significant legislative rulemaking activities for the period January 1, 2012, through December 31, 2013.

Please contact me at (360) 902-6744 if you have any questions.

Department of Labor and Industries
Significant Legislative Rules Report
January 1, 2012 – December 31, 2013

Number of significant legislative rules adopted between January 1, 2012, and December 31, 2013:

The Department adopted six significant legislative rules between January 1, 2012, and December 31, 2013. This included amendments to 184 WAC sections, the creation of 115 WAC sections, and 64 WAC repeals.

Rule Topic	Number of Sections		
	Amended	Created	Repealed
Fall Protection	15	13	20
Safety Standards for Firefighters	33	27	31
Factory Assembled Structures – Comprehensive Rules Review	23	6	0
Self-Insurance – Continuing Education Requirements	1	0	0
Medical Provider Network and COHE – Phase 1 (Per SSB 5801, Chapter 6, Laws of 2011)	0	10	0
Hazardous Drugs (Per ESSB 5594, Chapter 39, Laws of 2011)	0	12	0
Health Technology Clinical Committee Determinations	3	0	0
Medical Provider Network and COHE – Phase 2 (Per SSB 5801, Chapter 6, Laws of 2011)	6	0	0
Independent Medical Examinations	3	0	0
Crime Victims Compensation (Per SSB Bill 5691, Chapter 346, Laws of 2011)	9	0	0
Cranes	25	26	1
Medical Provider Network and COHE – Phase 3 (Per SSB 5801, Chapter 6, Laws of 2011)	3	0	0
SCS Electrical	43	4	2
Medical Provider Network and COHE - Phase 4 – Self Insurance Rules	1	0	0
Elevator Rules[1]	1	0	0
Board of Boiler Rules	12	1	3
Drug Rules	5	16	7
Electrical safety standards, administration, and installation (load banking)	1	0	0
Total	***184***	***115***	***64***

[1] Anticipated adoption date: November 19, 2013

Description of each rule adopted:

1. **Fall Protection, adopted February 4, 2013, WSR 13-04-073**
   The rulemaking consolidated the fall protection requirements located in Chapter 296-155 WAC, Safety Standards for Construction Work, into one coherent set of requirements. The rulemaking merged Parts C-1 and K, creating one location where fall protection requirements are located for construction, and also made technical changes.

2. **Safety Standards for Firefighters, adopted February 19, 2013, WSR 13-05-070**
   The rulemaking brought state firefighter standards into alignment with the federal Occupational Safety and Health Administration (OSHA) and current consensus standards.

3. **Factory Assembled Structures – Comprehensive Rules Review, adopted July 17, 2012, WSR 12-15-061**
   As part of a regular rules review, the rulemaking ensured that rules were clear and consistent with industry practice and standards.

4. **Self-Insurance – Continuing Education Requirements, adopted January 17, 2012, WSR 12-03-088**
   The rulemaking amended WAC 296-15-360, which required that a Department approved claims administrator choosing to renew their status via continuing education earn a total of 75 credits, including a minimum number of credits in five different categories. This rulemaking reduced the number of credit categories to three, simplifying the continuing education requirements.

5. **Medical Provider Network and COHE – Phase 1, adopted January 2, 2012, WSR 12-02-058**
   The rulemaking - the first of several - was required to implement Substitute Senate Bill 5801 (2011), which amended RCW 51.36.010 and directed the Department to establish a statewide medical provider network and expand Centers of Occupational Health Education (COHEs). This initial set of rules included establishing minimum standards for the credentialing of medical providers and other requirements for network participation, and defined "risk of harm" to injured workers.

6. **Hazardous Drugs, adopted January 3, 2012, WSR 12-02-053**
   The rulemaking implements ESSB 5594 (2011) which requires the Department to adopt rules implementing the 2004 National Institute for Occupational Safety and Health Alert on safe handling of hazardous drugs.

7. **Health Technology Clinical Committee Determinations, adopted June 5, 2012, WSR 12-12-059**
   The rulemaking amended WAC sections to align with the Washington State Health Technology Clinical Committee (HTCC) decisions on spinal injections, nerve stimulators, discography and structured intensive multidisciplinary programs (SIMPs).

8. **Medical Provider Network and COHE – Phase 2, adopted March 6, 2012, WSR 12-06-066**
   The rulemaking was required to implement Substitute Senate Bill 5801 (2011), which amended RCW 51.36.010 and directed the Department to establish a statewide medical provider network to treat injured and ill workers. This rulemaking clarified the term "initial visit" and also addressed healthcare services that may be provided by a nonnetwork provider and when care must be transferred to a network provider.

9. **Independent Medical Examinations, adopted January 22, 2013, WSR 13-03-129**
   The rulemaking amended rules to fill the gap between the existing standards for Independent Medical Examination providers and the recently adopted provider network credentialing standards under rules required by SSB 5801. This rulemaking also included changes to address other stakeholder concerns and incorporated best practices to ensure that high quality IME services are available and that appropriate medical decisions are made to promote the quickest recovery and earliest safe return to work possible for injured workers.

10. **Crime Victims Compensation, adopted November 20, 2012, WSR 12-23-085**
    The rulemaking amended eight and repealed nine rules under Chapter 296-31 WAC to align with Substitute Senate Bill 5691 (2011). The amendments included the removal of references to Title 51 RCW and rules being repealed, explain the impacts of the new benefit maximum, add clarity, and correct references to the billing guidelines.

11. **Cranes, adopted December 31, 2012, WSR 13-02-068**
    The rulemaking adopted new and amended rules for crane safety: it extended the date by which the requirement relating to written and practical testing requirements for qualified riggers is effective; added language to be at least as effective as the federal rule; and clarified the scope of the rule to include the following existing requirements: rigging for all construction activities (WAC 296-155-556); and personnel lifting with attached or suspended platforms using cranes or derricks (WAC 296-155-547).

12. **Medical Provider Network and COHE – Phase 3, adopted November 13, 2012 WSR 12-23-020**
    The rulemaking was required to implement Substitute Senate Bill 5801 (2011), which amended RCW 51.36.010 and directed the Department to establish a statewide medical provider network to treat injured and ill workers. This rulemaking clarified rules for network implementation.

13. **Electrical Rules, adopted January 22, 2013, WSR 13-03-128**
    The rulemaking adopted the 2014 consensus standards and made changes to be consistent with industry practice.

14. **Medical Provider Network and COHE - Phase 4, adopted April 9, 2013 WSR 13-09-023**
    The rulemaking was required to implement Substitute Senate Bill 5801 (2011), which amended RCW 51.36.010 and directed the Department to establish a statewide medical provider network to treat injured and ill workers. This rulemaking included requirements that self-insurers make certain their workers receive the information necessary to access care within the health care provider network.

15. **Elevator Rules, anticipated adoption date November 19, 2013**
    The rulemaking adopted the national conveyance safety standards for elevators and escalators, platform lifts and chair lifts, belt man lifts, and personnel hoists and other rules related to elevator safety.

16. **Board of Boiler Rules, adopted April 23, 2013, WSR 13-10-018**
    This rulemaking made clarifying and technical changes to the Board of Boiler Rules - Substantive (Chapter 296-104 WAC) based on actions and requests of the Board of Boiler Rules. The Boiler Program reviews the rules for additions and revisions on a regular basis to ensure the rules are consistent with the national consensus standards and industry practice.

17. **Drug Rules, adopted May 28, 2013, WSR 13-12-024**
    This rulemaking adopted rules to ensure safe, appropriate and effective drug therapy designed to improve clinical outcomes and support successful return to work. The adopted rule language updated the coverage of and payment for prescription drugs and described specific authorization requirements for the payment of opioids.

18. **Electrical safety standards, administration, and installation (load banking), adopted November 5, 2013, WSR 13-22-070**
    The rulemaking amended language in WAC 296-46B-920 related to scope of work requirements for load bank testing and preventative maintenance. The adopted rule amended the 07-scope of work requirements for electrical licensing to allow 07-level nonresidential maintenance specialty contractors and electricians the ability to perform installation and connections of temporary electrical conductors and equipment for the purpose of load testing.

The costs incurred in complying with this section:
The significant legislative rulemaking requirement of RCW 34.05.328 imposes additional costs to the agency in terms of dollars and staff. This section requires a formal cost-benefit analysis, in addition to a small business economic impact statement. As a result, the agency has required additional staff time of its economists and assistant attorney generals to develop and review these analyses.

Any legal action maintained based upon the alleged failure to comply with this section, the costs of such action, and the result:
N/A.

The extent to which this section has adversely affected the capacity to fulfill our legislatively prescribed mission:
The significant legislative rulemaking requirements did not adversely affect the capacity of the Department to fulfill its legislatively prescribed mission.

The extent to which this section has improved the acceptability of state rules to those regulated:
There have been no detectable changes in acceptability of the agency's rules by the regulated community based solely on RCW 34.05.328.

Any other information considered by the Office of Financial Management to be useful in evaluating the effect of this section.
None.

WASHINGTON STATE DEPARTMENT OF
Natural Resources

PETER GOLDMARK
Commissioner of Public Lands

November 5, 2013

Anne Knapp
Governor's Office for Innovation and Assistance
PO Box 43133
Olympia, WA 98504-3113

SUBJECT: Significant Legislative Rulemaking Report

Dear Ms. Anne Knapp:

In compliance with RCW 34.05.328(6), the Department of Natural Resources (DNR) submits the following information as requested for rules adopted between January 1, 2012 and December 31, 2013.

1. **Number of significant legislative rules adopted from January 1, 2012 through December 31, 2013;**
   None

2. **Title of each rule;**
   N/A

3. **The extent to which compliance with this section affected the substance of the rules adopted;**
   None

4. **Costs of complying with requirements;**
   None

5. **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;**
   None

If you have any additional questions or need further assistance, please contact me at (360) 902-2117 or Rochelle.goss@dnr.wa.gov.

Sincerely,

/s/

Rochelle M. Goss
Agency Rules Coordinator, External Affairs Program Lead
Department of Natural Resources

c: Pamela Krueger, Legal Liaison

Significant Legislative Rulemaking Report

To: Office of Regulatory Innovation and Assistance
From: Department of Revenue
Date: November 20, 2013
Subject: Report on activities relating to significant legislative rulemaking per RCW 34.05.328(6)

Number of significant legislative rules

Between January 1, 2012 and December 31, 2013, the Department of Revenue adopted three rules, WAC 458-20-10101 (Rule 10101), Business License Service – Total Fee Payable – Handling of Fees, 458-20-19404 (Rule 19404), Financial Institutions – Income Apportionment, and 458-40-660 (Rule 660), Timber Excise Tax – Stumpage Value Tables, as significant legislative rules.

When Rule 10101 was adopted, the Department treated it as a significant legislative rule because the application fees are established by rule and not by statute. However, this rule is not a significant legislative rule under RCW 34.05.328(5)(b). Legislation in 2011 transferred the master license service program from the Department of Licensing to the Department of Revenue and renamed it the business license service. There was no material change to the rule, but merely replaced WAC 308-300-160 with WAC 458-20-10101.

Rule 19404 was identified at the CR102 stage as significant legislative rulemaking because the rule not only adopted legislative changes to apportionment of financial institution income, but, consistent with 2010 legislation, this rule the defines a financial institution and as such determined what businesses may take advantage of certain exemptions, deductions, and accounting methods included in the 2010 legislation.

Twice each year the department adopts Rule 660. This rule is used by timber harvesters to calculate their timber excise tax liability. The data and calculations used have been negotiated between the timber industry and the Department. There are other ways of calculating the stumpage values and this is why the Department first designated this rule a significant legislative rule in 1996. We update the cost benefit analysis each time the rule is rewritten.

Title or description of each rule

WAC 458-20-10101 Business License Service – Total Fee Payable – Handling Fees.

WAC 458-20-19404 Financial Institutions – Income Apportionment

WAC 458-40-660 Timber Excise Tax – Stumpage Value Tables

Impact of compliance	Generally, compliance with this section does not affect the substance of the rules the Department adopts.
Costs	The additional costs of preparing the information required for Rule 660 have been minimal, principally because the Department is required to routinely revise this rule. Given the nature of the other rules treated as significant legislative rules, any additional costs have also been minimal to the Department's routine rule making process. These costs were absorbed within the normal operations of the Department.
Any Legal Actions	There have been no legal actions against the Department directly related to the use or nonuse of regulations associated with significant rules during this time frame.
Other Relevant Information	The standard rulemaking process is sometimes complex and can be a long process for some of the rules adopted by the Department. Because of the length of time, the Department often relies on other interpretive documents to provide timely information to taxpayers and Department employees. The interpretive documents are later rolled into the revised rule.

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
PO Box 45010 · Olympia, WA 98504-5850

November 5, 2013

TO: Jesus Sanchez, Director
Office of Regulatory Assistance

FROM: Kevin Quigley, Secretary
Department of Social and Health Services

SUBJECT: DSHS Significant Legislative Rule Report

Attached is the Department of Social and Health Services (DSHS) report of significant legislative rules proposed and adopted according to requirements in RCW 34.05.328 for the period of January 2012 through December 2013. The introduction describes an overview of the Department's significant legislative rule-making during this period. Following the introduction are descriptions of each significant legislative rule-making project adopted by the DSHS administrations during this period.

If you have any questions regarding significant legislative rule making at DSHS, please contact our DSHS Rules coordinator, Katherine Iyall Vasquez, at 360.664.6097 or by e-mail at DSHSRPAURulesCoordinator@dshs.wa.gov . Thank you.

Attachment

cc: Brittany Wilson
Anne Knapp
Dana Phelps
Craig Lowe

EMPLOYMENT SECURITY DEPARTMENT
SIGNIFICANT LEGISLATIVE RULES REPORT

1. **Number of significant legislative rules adopted from January 1, 2012 through December 31, 2013**

   CR 102s filed – 3; CR103s filed –3. WAC sections - 6.

2. **Title or description for each rule.** Note: Only those rules that qualified as significant legislative rules are included.

   UI TAX RULES

   CR102 filed October 1, 2013, CR103 filed December 3, 2013

   Establishes 4 new sections implementing legislation providing that employers are ineligible for non-charging to their account if they have established a pattern of untimely or inadequate responses to written requests for information from the department.

   - WAC 192-320-081 – Defines an "event" for the purpose of determining if there is a pattern of failing to respond timely or adequately to the department's written request for information relating to a claim.
   - WAC 192-320-082 – Establishes the situations for finding good cause when the employer fails to respond due to unforeseen events outside of the employer's or the employer's agent's control.
   - WAC 192-320-083 – Defines a written request for information.
   - WAC 192-320-084 – Defines employer's agent

   CR102 filed September 17, 2013, CR103 filed November 7, 2013

   - WAC 192-310-030 - Clarified that, consistent with current practice, employers are subject to a $25 penalty for late quarterly wage reports, as are late tax reports.

   CR102 filed September 17, 2013, CR103 filed November 7, 2013

   - WAC 192-310-010 – Established a $25 penalty for employers who omit required ownership information on their registration form.

3. **Whether compliance with this section affected the substance of rules adopted.**

   Compliance with significant legislative rule requirements does not affect the substance of rules adopted. The substance of the adopted rules is based on the law, administrative requirements, and stakeholder input. The requirements of the section related to cost-benefit analyses and post-adoption implementation do not impact the substance of the rules.

EMPLOYMENT SECURITY DEPARTMENT
SIGNIFICANT LEGISLATIVE RULES REPORT

4. Costs of complying with the requirements.

The costs of complying with the significant legislative rule requirements are minimal. Since UI and other Employment Security program rule-making is generally based on implementation of federal and state statutes and regulations, the analysis of the costs and benefits usually takes no more than four to eight hours per filing. Post-adoption coordination of the requirements of the rule is rarely required for the UI program as the Employment Security Department is the only agency that administers this program.

5. Legal actions for failure to comply with this section.

None.

6. Narrative responses to RCW 34.05.328(6) parts (d), (e) and (f).

(d) No adverse effect on the capacity to fulfill the department's legislatively prescribed mission.

(e) No measurable increase or decrease in the acceptability of adopted rules on those regulated.

(f) The Employment Security Department follows the same general rule-making processes whether the rules qualify as significant legislative rules or not. Preparation of the cost-benefit analysis and post-adoption coordination (if any) have not factored into the content of the final rules nor have they limited the ability of the department to meet its legislatively mandated mission.

STATE OF WASHINGTON **PO Box 47012**
FOREST PRACTICES BOARD **Olympia, WA 98504-7012**

November 5, 2013

MEMORANDUM

TO: Jesus Sanchez, Director, Governor's Office for Innovation and Assistance

FROM: Aaron Everett, Chair

SUBJECT: Significant Legislative Rule Making Report for 2012-2013

The following summary is provided for the 2014 Significant Legislative Rule Making Report as described in RCW 34.05.328 (6).

List of Significant Legislative Rules adopted from 1/1/2012 – 12/31/2013

1. **# of WAC Sections**	2. **Title and Description of Rule Making**
13	**Land Use Conversions and Forest Practices Applications (chapters 222-08, 222-12, 222-16, and 222-20 WAC)** • Eliminates all references to "lands platted after January 1, 1960." Proposed forest practices on these lands are no longer automatically assumed to be conversions to non-forestry uses, and therefore are not automatically classified Class IV-general. (House Bill 1582, Chapter 207, Laws of 2011) • Eliminates the six-year moratorium on development when landowners have not stated their intention to convert their forest land to other uses. A new process involving a "Notice of Conversion to Non-forestry Use" replaced the six-year moratorium. (Second Substitute House Bill 5883, Chapter 106, Laws of 2007) • Increases the duration of a Forest Practices Application or notification from two to three years. (Second Engrossed Substitute Senate Bill 6406, Chapter 1, Laws of 2012)
9	**Forestry Riparian Easement Program (chapter 222-21 WAC)** (Engrossed Substitute House Bill 1509) • Eliminates non-profit landowners from program eligibility; • Modified landowner qualifications – at the time compensation is offered for a forest riparian easement, the landowner must be a small landowner; and • Determines the value of the easement based on timber values on the date the complete Forestry Riparian Easement Program application is received.

1. **# of WAC Sections**	2. **Title and Description of Rule Making**
2	**Notice of Forest Practices to Affected Indian Tribes (WAC 222-20-120 and WAC 222-30-021)** • Establishes an improved process for forest landowners and affected Indian tribes to meet the rule's landowner-tribe meeting requirement when landowners' proposed forest practices may intersect with cultural resources. • Changes the WAC title to *Notice of forest practices that may contain cultural resources to affected Indian tribes* to call attention to the fact that the rule includes requirements for applications that involve cultural resources. • Corrects a rule reference in the 'clumping strategy' subsection of *Western Washington Riparian Management Zones.*
1	**Critical Habitats of Threatened and Endangered Species (WAC 222-16-080)** • Eliminates the critical habitat for bald eagle *(Haliacetus leucocephalus)* and the peregrine falcon *(Falco peregrinus) Critical Habitats (state) of threatened and endangered species.* • Updates reference to the western pond turtle (*Clemmys marmorata)* to the recognized common and scientific names: Pacific pond turtle (*Actinemys marmorata).*
2	**Forest Biomass (WAC 222-16-010 and WAC 222-30-020)** • Adds a definition of "forest biomass"; • Inserts a clarification within the existing definition of "forest practice"; • Inserts "…including forest biomass removal operations…" into the logging system portion of harvest unit planning and design.
30	**Forest Practices Hydraulic Projects (chapters 222-12, -16, -20, -24, -30, -50 WAC)** • Incorporates into the forest practices rules the fish protection standards adopted under chapter 77.55 RCW, as the rules existed on the effective date of the legislation. (Second Engrossed Substitute Senate Bill 6406, Chapter 1, Laws of 2012)

3. **Compliance.**
   Compliance with RCW 34.05.328 did not affect the substance of the rules adopted.

4. **Costs.**
   Costs were associated with staff time in planning and implementing the requirements under RCW 34.05.328.

5. **Legal actions.**
   No legal actions have been initiated.

6. **Adverse effects.**
   The directives under RCW 34.05.328 did not have an adverse impact on the Board's capacity to meet its legislatively prescribed mission.

   Rule acceptability.
   No measurable changes for the adopted rules have been noted. RCW 34.05.328 increased the information available to the regulated community which results in more specific comments from stakeholders and a better understanding of the decision-making by the agency.

   Other relevant information.
   None.

Please contact Patricia Anderson, Rules Coordinator for the Board, at 902.1413 if you have any questions.

paa/

Office of the Insurance Commissioner Significant Legislative Rules Report 2014

Executive Summary

The Office of the Insurance Commissioner submits this report to assist the Office of Regulatory Affairs in preparing the 2014 report required by RCW 34.05.328(6). We submitted our last report in early 2012. We have adopted 26 rules between January 1, 2012 and December 31, 2013 that we determined are "significant legislative rules." The significant legislative rule requirements add approximately $210,000 in annual costs to our budget.

The Commissioner built performing significant legislative rule analysis into our rule-making process. A policy analyst makes the initial assessment, which our economic policy analyst validates. The economic policy analyst prepares the draft of the cost benefit analysis, and confirms it with the policy analyst. We are seldom asked for copies of the either the draft or final cost benefit analysis.

List of Proposed Rules Deemed Significant Legislative Rules

The table below lists, in the order initiated, the rules proposed deemed significant legislative rules.

Name of Rule	New (section)	Amended (section)	Repealed(section)
Unauthorized insurers	1	1	1
Carriers grievance and appeal process	15	3	
Property and casualty rate stability	1		

Name of Rule	New (section)	Amended (section)	Repealed(section)
Biographical affidavits	3		
Life settlements	1	2	
Unfair practices with respect to vehicle insurance		1	
Suitability in the sale of annuities	2		
Separate premium accounts		1	
Prescription drug benefit standards	7		
Individual market reinsurance program	1		
Title insurers rate filing		2	
Risk adjustment program for health benefit coverage	1		
Insurer notices for PIP and the FAIR PLAN		2	
Security breach notification	1		
Long-term care inflation requirements		1	
Essential health benefits designation	9		
Data submission requirement for K-12 project	11		

Electronic submission of fingerprints to WA State Patrol		2	
Health plan carriers allocation account requirements	1		
Universal life products	1		
Life settlements policyholder notice of options	1	2	
Surplus line broker licensing requirements		1	
Geographic rating area designation	2		
Responding electronically to the OIC regarding consumer complaints		2	
Open/special enrollment	8		
Market transition rules	6		
Totals: Number of rules: 26	72	20	1

The Commissioner's approach to rule making does not change the scope or content of proposed rules based on the Administrative Procedures Act requirements to perform a cost benefit analysis for significant legislative rules. We draft the rules, perform the analysis of whether the proposed rule meets the significant legislative rule criteria, and then draft the

cost-benefit analysis. We do not perform cost benefit analysis for those proposed rules falling under one of the exceptions in RCW 34.05.328(5)(b).

Costs Incurred to Comply

The Commissioner incurs additional costs in order to comply with RCW 34.05.328. Our estimate of the costs attributed to statutory compliance follows.

Analyst effort:	1.6 FTE	approximately $175,000 annually
List serve and Website maintenance:	.4 FTE	approximately $35,000 annually

Because the analysis must be done on each rule, staff time for rule making increased after the law was enacted. The Commissioner hired a full time economic policy analyst to perform the required cost-benefit analysis. Additional staff analysts are also required, because the time to complete rule making is longer due to the additional steps.

By eliminating U.S. mailing of rule filings in 2011 and using electronic distribution through our list-serve and email to regulated industry contacts and interested stakeholders we have reduced costs to nearly zero.

Legal Actions Based on Failure to Comply with RCW 34.05.328

The Insurance Commissioner has not been subject to legal action based on failure to comply with RCW 34.05.328 during the time period for this report.

Adverse Impact on the Insurance Commissioner's Office Capacity to Perform Its Mission

1. *Increased Time to Complete Rule Development and Adoption*: In order to comply with RCW 34.05.328, the staff working on rules spends approximately 25% more time than they otherwise would when developing rules. While the analysis called for by the statute is common to good rule and policy analysis, and normally is part of any rule development, the statute's documentation and communication requirements require additional time.

   Because the statute provides for a potential cause of action against the agency, time for legal review of proposed rule-making activity is also more common. We have not collected data during the past four years, but do seek legal confirmation of our analysis in order to comply with the law. This increases costs, and takes additional time to complete a rule.

2. *Reduced Ability to Respond to Changing Circumstances* Because rule making takes longer to complete in order to ensure compliance with RCW 34.05.328, the agency must use emergency rules followed by permanent rule making to quickly address or respond to issues. This has the potential to create more confusion for the public, as they must comply with an emergency rule and then change or adapt again once the permanent rule is in place. Even where there is agreement on the rule amongst stakeholders and the agency, the processes take longer to complete. In 2013 alone OIC adopted 9 emergency rules.

3. *Limits on Number of Rules under Development* We limit our analysts to a docket of five active rules, and as a result have a backlog of pending rule development requests. This limit arises from the need to include the economic policy analyst in all rule development in order to ensure compliance with RCW 34.05.328.

Assessment of Improvement in the "Acceptance" of State Rules by Those Regulated Because of Statutory Compliance

The Office of the Insurance Commissioner adopts more rules than many state agencies because:

- the legislature creates new programs requiring implementation and interpretation, and
- the regulated industry regularly experiences multiple changes that require amendments to existing rules. These can include changes in federal rules, new model rules adopted by the National Association of Insurance Commissioners, or new insurance products put on the market.

As part of the regular course of doing business, the Commissioner prioritizes working with industry and interested parties in developing rules. The processes required by RCW 34.05.328 have not improved acceptance of rules by those regulated; we believe the attitude and approach taken by the agency has done so.

We regulate a highly sophisticated industry that understands the need for rules to explain procedures, implement programs, and align state practices with federal requirements. We rarely receive testimony on our rules at hearing, as the majority of our rule-making hearings are unattended. The Commissioner interprets this as a positive indication of how effective our stakeholder efforts are during rule development. Our compliance with RCW 34.05.328 is unrelated to this outcome.

Other Relevant Information

RCW 34.05.328 probably improves rule quality for agencies that do not engage in rule making as a regular practice, because the analysis it requires supports the development of good rules. Without the statutory requirement, rule writers probably would attempt the analysis, but without specialized expertise, and would not routinely access related data to support the analysis. The cost-benefit assessment would most likely be anecdotal.

However, performing cost benefit analysis that meets the generally accepted economic analysis standards set out in the statute requires access to an economic analyst. Our rule making volume is high enough to justify having an economic analyst on staff to assist with this function. We would probably not have retained one without the requirements of this statute, and our cost-benefit analysis would not be as specific or accurate.

One of our goals is to increase the use of the relevant and most reliable data to support our initial assessment of rule proposals, so that rules reflect what we learn

from the data. This supports the agency mission because the Commissioner regulates to both protect consumers and ensure a financially sound insurance marketplace in Washington.

STAFF CONTACT
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To accommodate persons with disabilities, this document is available in alternative formats and can be obtained by contacting the Office of Financial Management at 360/902-0608 or TTY 360/902-0679.