



IMPACTS OF SIGNIFICANT LEGISLATIVE RULE-MAKING REQUIREMENTS (2006–09)

PRIOR REPORTS TITLED "REGULATORY REFORM UNDER ESHB 1010"

**Office of Financial Management and
Office of Regulatory Assistance
State of Washington**

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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 rule-making requirements direct 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 Financial Management to report on the experience of the named regulatory agencies in carrying out these rule-making requirements. The current report was prepared by the Office of Regulatory Assistance (ORA), an office administered by the Governor's Office and housed within the Office of Financial Management. In preparing the report, ORA consulted with state agencies and solicited comments from business and environmental organizations as well as from the Association of Washington Cities and the Washington State Association of Counties. ORA received written reports from each of the following agencies:

- Department of Ecology
- Department of Fish and Wildlife
- Department of Health
- Department of Labor and Industries
- Department of Natural Resources
- Department of Revenue
- Department of Social and Health Services
- Employment Security Department
- Forest Practices Board
- Office of the Insurance Commissioner

The reports explain the agencies' experiences with significant legislative rule-making for calendar years 2006 through 2009. They address the requirements for the overall report from OFM as set forth at RCW 34.05.328(6), describing the following:

- (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 ... to be useful in evaluating the effect of this section.

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

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

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

Department of Ecology

22 significant legislative rules adopted. Sample topics included:

- Agricultural burning
- Wetland mitigation banks
- Electronics recycling
- Oil spill contingency planning
- Standards for construction and maintenance of water wells
- Water resources management

Department of Fish and Wildlife

1 significant legislative rule adopted.

1 repealed rule.

Topic: Pamphlet HPA for mineral prospecting (gold panning)

Department of Health

38 significant legislative rules adopted.

Sample topics included:

- Medical marijuana
- Group A public water systems
- Dental hygiene – licensing
- Athletic trainer – licensing
- Veterinary technicians – continuing education

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

1 significant legislative rule adopted.

Topic: Timber Excise Tax – stumpage value tables (adopted/ updated twice per year)

Department of Social and Health Services

84 significant legislative rules adopted. Sample topics included:

- Companion home residential services
- Adult family home licensing
- Managed care rules
- Critical access hospitals
- Durable medical equipment
- Reimbursement of Medicaid money
- Access to Baby and Child Dentistry program
- Hospital rates
- Health technology assessments
- Community mental health agencies

Employment Security Department

50 significant legislative rules adopted.

22 amended rules and 11 repealed rules.

Sample topics included:

- Tax rates for new employers
- Reporting requirements
- Waiver of higher rates for delinquent employers
- Business transfer requirements
- Penalties for fraud
- Benefits for claimants in approved entrepreneurial training courses

Forest Practices Board

7 significant legislative rules adopted. Sample topics included:

- Small forest landowner road maintenance and abandonment plans (RMAPs)
- Northern spotted owl
- Historic sites and conversion activities

Office of the Insurance Commissioner

83 significant legislative rules adopted.

Sample topics included:

- Credit life, accident and health insurance
- Health plan rates
- Rate form and filings
- Juvenile life insurance policies
- Licensing and reporting

Department of Natural Resources

5 significant legislative rules adopted.

Sample topics included:

- Public access and recreation
- SEPA policies and procedures
- Standards for land boundary and survey monuments

All agencies report that public involvement is a crucial and useful component of the rule-making process. Most agencies noted that outreach to stakeholders occurs whether or not a rule is designated as a significant legislative rule. The key difference in the significant legislative rule process is the requirement for a cost-benefit analysis and a determination that the proposed rule is the least burdensome alternative for the regulated community. DSHS noted that for the Domestic Violence Shelter Programs Rule adopted in February 2007:

“The requirement of doing a cost-benefit analysis, while somewhat cumbersome, had the effect of more carefully and critically analyzing the costs and benefits associated with the proposed rules. Those affected by the proposed rules had a clear avenue to articulate in a methodical way how each proposed change would or would not affect their business. This provided greater detailed information to DSHS/CA (Children’s Administration) in analyzing whether the costs of the proposed rule outweighed the benefits of moving forward with implementation. In this case, the costs were minimal and the benefits far outweighed the monetary/staff impact of the proposed rules.”

Other agencies noted that it was difficult to determine whether the requirements of RCW 34.05.328 directly affected the substance of the rule, yet agreed that the process enhanced decision making by increasing the information available to the public and creating a shared framework for dialogue about the rule requirements. Some agencies stated that compliance with the requirements did not affect the substance of their rules, but that their public involvement processes and stakeholder outreach provided great benefit and improved the final rules.

Cost Impacts

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

Department of Ecology

Does not track costs separately from other rule-making activities but notes that additional costs are incurred for the economic analysis and additional stakeholder outreach.

Department of Fish and Wildlife

\$208,864

Department of Health

	Average Costs/Rule	
	Significant	"Non-Significant"
Nov. 2005 – Oct. 2007	\$17,998	\$4,634
Nov. 2007– Oct. 2009	\$36,502	\$3,707

Department of Labor and Industries

Reported additional staffing costs for developing cost-benefit analyses. These were absorbed in normal operations.

Department of Natural Resources

Nominal costs for additional staff time per rule.

Employment Security Department

Estimates an average of 30 additional staff hours per rule to complete the required economic analysis and outreach for significant legislative rules.

Forest Practices Board

Does not track costs separately.

Office of the Insurance Commissioner

\$235,000 per year.

Dept of Social and Health Services

Some administrations in DSHS reported the extra requirements for economic analysis and review added a small cost for staff time. These were absorbed in normal operations.

Department of Revenue

Reported minimal costs. These were absorbed in normal operations.

Legal Actions

No agency faced legal action for failure to comply with the requirements of RCW 34.05.328. The Department of Health noted, however, that three significant legislative rules were challenged on bases other than the validity of the cost-benefit analysis or the rule-making process.

Adverse Effects

None of the agencies reported that the significant legislative rule development process or requirements adversely affected the capacity of the agency to fulfill its legislatively prescribed mission.

Agencies reported that the requirements add cost and time to the rule-making process. The Department of Health and DSHS noted that significant rule development and analysis could potentially lead to problems in meeting federal deadlines. The Office of the Insurance Commissioner reported that the process has slowed the agency's response to changing circumstances, and because the processes are more complex and time-consuming, fewer requests for rule development can be addressed.

Rule Acceptability

Most agencies reported no information about changes in the acceptability of agency rules resulting from the requirements of RCW 34.05.328. Some agencies have received positive comments from their customers about increased information available to the regulated community, which results in more specific comments from stakeholders and a better understanding of the decision-making process. The Department of Health cited examples where public comments and questions about data and conclusions in a preliminary cost-benefit analysis led to amendments to provide clarity or incorporate additional data in the analysis.

DSHS cited several examples where it believed its stakeholder process improved the acceptability of final rules. It noted that the rule development process for all DSHS rules includes significant stakeholder involvement. Similarly, the Office of the Insurance Commissioner commented that the requirements of RCW 34.05.328 were not the driving factor behind its success in rule-making. Rather, it called out an agency-wide attitude and approach that prioritizes working with the insurance industry and interested parties as the keys to acceptance.

Stakeholder Comments

The business community continues to express concerns, generally, about the substantive results of significant legislative rule-making. The Washington state office of the National Federation of Independent Businesses, or NFIB, commented that the statutory process was well intentioned, but not necessarily effective at getting agencies to respond to business concerns. NFIB cited the heat stress rule and the ergonomics rule as examples where business questioned both the need for regulations and the cost-benefit analysis. It was dissatisfied that even though the rules were unsatisfactory to many businesses, they were still adopted. NFIB suggests that meeting the letter of the law on the process for significant legislative rule-making is no guarantee that adopted rules will satisfy all stakeholders.

In a meeting with ORA, NFIB noted that some agencies, such as the Department of Revenue, do more or consistently do a better job of trying to understand and respond to their regulated community. (See the Appendix for a copy of the NFIB comment letter).

The Association of Washington Business, or AWB, submitted a letter in support of maintaining the significant legislative rule-making procedure. It offered several suggestions, including:

1. Have the Department of Commerce play a role similar to that of the Small Business Administration's Office of Advocacy at the federal level in conducting independent reviews of key rules or laws that affect employers.
2. Amend the statute to require administrative agencies to produce two versions (or maybe with embedded options) of a regulation. Version #1 would be what the agency believes most closely conforms to what the Legislature has directed. Version #2 adds the "extras" that the agency thinks might have good value (including policy initiatives). The agency would make a sincere effort to identify the incremental gains/losses, cost implications to the implementing agency and regulated entities, etc. In short, AWB seeks a more detailed development and consideration of alternative versions of the rule.

3. Create a process for a regulated party (individual or association) to bring forward an alternative version of a rule and have sincere evaluation of it.

ORA also met with the Association of Washington Cities and Washington State Association of Counties. Both organizations were generally satisfied with the significant legislative rule-making process, and had not heard concerns from their member jurisdictions. They also acknowledged the difficulties of meeting the many and varied interests that arise in rule-making processes.

The Department of Ecology reported that stakeholders have expressed both positive and negative comments on the significant legislative rule-making requirements. Some interested parties say they appreciate the additional information that is offered as a result of documents prepared to meet requirements. Other groups have wondered whether the requirements of RCW 34.05.328, which often cause time delays, result in improvements that are worth the wait.

The Employment Security Department noted that its stakeholders comment positively on the inclusiveness of the department's process for rule-making, prompting the department to conclude that stakeholder participation is an invaluable resource.

Other Information from Agencies

The Department of Revenue continues efforts to make rule-making information more accessible to the public. The department emphasizes identifying and reaching out to stakeholders to encourage involvement early in the rule-making process. This strengthens relationships between the department and stakeholders, encourages positive participation, and results in rules providing information in a useful manner. Because rule-making can be time consuming, Revenue uses other interpretive documents to provide timely information to taxpayers and employees if the standard rule-making process has not been completed. It files notices with the Code Reviser to announce the issuance or cancellation of these interpretive statements.

The Department of Health and the Department of Social and Health Services included information about pending rules that were expected to be adopted or effective in December 2009 or January 2010. See their agency reports for details.

The Office of the Insurance Commissioner noted that performing a cost-benefit analysis that meets generally accepted economic analysis standards as set out in the statute requires access to an economist. The office now has an economist on staff, but notes that without the requirements of the statute, it might not have retained one, which would have had a negative impact on its rule-making analyses.

APPENDICES

Text of RCW 34.05.328 Significant Legislative Rules

Comment Letters from Business Groups

Agency Reports

Department of Ecology

Department of Fish and Wildlife

Department of Health

Department of Labor and Industries

Department of Natural Resources

Department of Revenue

Department of Social and Health Services

Employment Security Department

Forest Practices Board

Office of the Insurance Commissioner

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 rulemaking 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 rulemaking 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](#).

December 30, 2009

Faith Lumsden, Director
Governor's Office of Regulatory Assistance
Insurance Building, Suite 140
PO Box 40002
Olympia, WA 98504

Via email and US Postal Service

Dear Director Lumsden:

Thank you for the opportunity to comment for your office's report on significant legislative rule-making, pursuant to RCW 34.05.328.

Given your schedule and the holiday season, I thought a written response would ensure NFIB's comments were received in a timely fashion. I would be happy to further discuss this matter with you at your convenience.

It has been my experience that this well-intentioned statute is little more than a paper tiger. State agencies have become expert at conjuring analyses justifying their preconceptions that appear to meet the letter, but certainly not the spirit, of this law. In far too many cases, the deck is stacked against the regulated community well before the rule-making process is opened to the public. A perfunctory effort is made to meet statutory requirements before adopting the rule, as planned, with little or no regard for any public comment questioning the need for the proposed regulation or highlighting analytic flaws, less burdensome alternatives, and conflict with other existing laws, regulations or court decisions. The regulated community is then left to seek recourse with the legislature, courts or the people through the initiative process.

Several examples come to mind from the agencies I am most familiar with:

- ✍ Labor & Industries' recent rule-making for its **2010 workers' compensation rate increase**. Public testimony was overwhelmingly opposed to the proposed increase. To the best of my knowledge, only representatives of organized labor supported the increase – while requesting that workers not be subject to it. Several alternatives and reform measures were suggested by small business owners. The department adopted the rule anyway.
- ✍ Labor & Industries' emergency and permanent **heat stress rule**. The regulated community provided ample testimony and evidence calling into question the need for the regulation, demonstrating that compliance costs would exceed alleged benefits, as well as pointing out duplication and conflict with existing state and federal regulations. The department adopted the rule anyway.
- ✍ Labor & Industries' **ergonomics rule**. Here again, the need for the rule, as well as the alleged science underpinning it, were brought into question. Evidence of cost outweighing supposed benefits was provided and alternatives were offered. The department adopted the rule anyway. The rule was overturned by a successful initiative to the people.
- ✍ Labor & Industries' **"Retro Cap" rule**. As before, public comment was overwhelmingly opposed. Testimony clearly showed there was no legitimate need for the rule, that alternatives were available, and so forth. The department adopted the rule anyway. The regulated community brought suit and the court determined the rule was arbitrary and capricious.

Department of Commerce

AWB believes the Department of Commerce has a potential role to play in the equation, as increasing JLARC and JARRC duties to do reviews or hear complaints before rules are permanently adopted. By analogy, the Department of Commerce could play a role similar to that of the Small Business Administration's at the federal level in conducting independent reviews of key rules or laws that affect employers.

We are open to addressing the functionality of the significant rulemaking process while maintaining the integrity of the goal of the APA. There were proposals during the 2009 legislative session to put this requirement on hold during bad times due to costs and would allow the agency to adopt rules more easily during this time.

Department of Ecology

With regard to the Department of Ecology, we continue to believe that 34.05.328 is a well-intentioned and necessary tool to achieve reasonable regulation.

There is, however, significant disparity internally among Ecology programs on how these statutory requirements are addressed. For instance, AWB members commend the Toxics Cleanup Program, which appears to take the rulemaking mandate seriously; even applying the principles of 34.05.328 to non-significant legislative rules such as the Persistent Bioaccumulative Toxins rule and to the development of chemical action plans. Unfortunately, this is less so with the Air Quality Programs. The Water Quality program has been able to ignore it for the most part.

To the extent the agency addresses it, the activity or interest quickly centers on a cost-benefit analysis. These analyses tend to be simplistic and assert that Ecology's rule is a reasonable buy.

In addition, the more interesting and important elements of the statute get overlooked — “alternative versions” of the proposed rule are never produced and thus the determination on which is “least burdensome . . . for those required to comply” is never considered. In our view, state rulemaking tends to lead toward increasing stringency beyond comparable federal requirements. Whether this increased stringency has been directed by our legislature is rarely considered. Moreover, the statute requires the development of an implementation plan. This is an obviously critical element of a successful rule, but Ecology typically doesn't provide much analysis. We have

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regulatory requirements which aspire to perfection on the written page, but Ecology doesn't have the resources to implement.

Ecology programs also often wait until rule adoption to produce some of the basic analysis required by the statute. To the extent an alternative version is conceived and compared, that information is likely to be in the rule adoption package and probably in response to comments that were submitted in the public involvement phase. We think the significant legislative rule requirement needs to be front-end loaded in the rule creation process to meet the statutory intent.

Ecology has a 30-year history of adopting a more stringent state version of some federal regulatory requirement. It would be interesting, albeit difficult, to understand the incremental cost and incremental environmental "benefit" of the state customization. As one example, there are many states which simply implement the federal Resource Conservation and Recovery Act (RCRA) for hazardous waste management. Not so in Washington. Our state regulation, WAC 173-303, is a real challenge.

Notwithstanding these concerns about how the Rule is implemented by Ecology, we have some recommendations for change, as follows:

First, amend the statute to require administrative agencies to produce two versions (or maybe with embedded options) of regulation. Version #1 would be that which the agency believes most closely conforms to what the legislature has directed. Version #2 adds the little extras that the agency thinks might have good value (i.e., the policy initiatives). The agency makes a sincere effort to identify the incremental gains/losses, cost implications to the implementing agency and regulated entities, etc. In short, require development and consideration of alternative versions of the rule.

Second, create an ability for a regulated party (individual or association) to bring forward an alternative version of a rule and to have sincere evaluation of it.

Third, extend 34.05.328 to general wastewater discharge permits (and maybe other permit or licensing programs). The statute now only addresses rule development. But general permits affect broad sections of the Washington economy and these permits have been examples of Ecology over-reaching.

Finally, as a more creative approach, have the legislature direct Ecology to sunset certain environmental regulations and redevelop and adopt with these APA principles in mind.

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Again, thank you for the opportunity to comment on the status of this important tool.
Please let us know if you have any additional questions.

Sincerely,



Christian M. McCabe
Government Affairs Director
Association of Washington Business

ASSOCIATION OF WASHINGTON BUSINESS
Membership Government Affairs Member Services AWB Institute

T 360.943.1600 ✉ PO Box 658, Olympia, WA 98507-0658
T 800.521.9325 🏠 1414 Cherry St. SE, Olympia
F 360.943.5811 www.awb.org

VIA REGULAR MAIL and E-MAIL

January 14, 2010

Ms. Faith Lumsden
Director
Washington State
Governor's Office of Regulatory Assistance
P.O. Box 43113
Olympia, WA 98504

Dear Director Lumsden:

Thank you for contacting the Association of Washington Business (AWB) and asking for our members' input on the current status and effects of Washington's Administrative Procedures Act (APA) "significant legislative rule making process" (RCW 34.05.328).

From AWB's perspective, the use of significant legislative rulemaking has been an extremely valuable part of the rulemaking processes since its adoption. From our perspective, RCW 34.05.328 has generally been a great help in requiring state agencies to justify rulemaking.

However, we believe that improvements are needed to ensure participation of all relevant state agencies, as well as expansion of the requirement to local governments. We also believe that greater independence is needed in the development of the cost-benefit analysis for these types of rules. A good example of this is the Ergonomics Rule where the Department of Labor and Industries' cost-benefit numbers were substantially less than what private industry's actual data reported.

Below are other specific examples and recommendations for improving use of the Rule.

Similarly, the regulated community was forced to take legal action to overturn a Technical Assistance Advisory issued by the Office of the Insurance Commissioner that attempted to alter the way **association health plans** may be rated, seriously jeopardizing the affordability and competitiveness of association plans. I raise this example to demonstrate that some agencies are willing to use questionable means to achieve their particular policy objectives outside of the formal rule-making process when that process would likely frustrate their ambitions.

Other recent examples of regulatory excess include:

- ✍ State Building Code Council **regulations on energy use and efficiency standards** that are inconsistent with targets and timelines approved by the legislature. Legislative and legal actions are being considered.
- ✍ Department of Ecology's **Kittitas Basin water withdrawal moratorium**, which was imposed with no quantifiable evidence made available to the public to support the department's now 240-day, "emergency" rule.
- ✍ **Governor's executive order on climate change**. The legislature refused to enact the governor's request legislation related to cap-and-trade, yet agencies are implementing policies "that [accomplish] what the bill would have authorized and more," with "an almost certain increase in the regulated community's interest in getting a national [cap-and-trade] program in place [as] an important side benefit," according to the Governor's Decision Document of May 5, 2009.

Based agency actions such as these, NFIB/Washington believes RCW 34.05.328 has become little more than a worn speed bump easily maneuvered around by agencies in pursuit of their particular regulatory agenda.

I would welcome the opportunity to discuss these comments with you. The best way to reach me is at (360) 789-3355 or by email to Patrick.Connor@NFIB.org.

Respectfully submitted,

/s/ Patrick Connor

Patrick Connor

NFIB/Washington | State Director
4160 – 6th Avenue SE | Suite 201
Lacey, Washington 98503
360.786.8675 office | 360.789.3355 cell

www.NFIB.com/WA | www.NoWayBigLabor.com | www.FixedforAmerica.com



DEPARTMENT OF
ECOLOGY
State of Washington

Report of Impacts of Significant Legislative Rule Making

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Introduction.

Revised Code of Washington (RCW) 34.05.328(6) requires the Office of Financial Management (OFM) 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 OFM asks agencies to submit information to them about significant legislative rule-making in the agencies.

This report includes:

- A list of significant legislative rules adopted by Ecology between January 1, 2006 and October 31, 2009
- A description of how Ecology’s compliance with RCW 34.05.328 affected the content of rules adopted.
- A summary of additional costs associated with RCW 34.05.328.
- A description of legal actions against Ecology for failure to comply with RCW 34.05.328.
- The extent to which significant legislative rule-making requirements have adversely affected Ecology’s ability to fulfill its mission.
- Descriptions of any decrease or increase in the acceptability of significant legislative rules by the regulated community.
- A summary of comments from interested parties on the impacts of the significant legislative rule-making requirements.

Rules Adopted Under Significant Legislative Rule-making Requirements (RCW 34.05.328).

Ecology completed 22 rule makings to adopt significant legislative rules between January 2006 and December of 2009.

Significant Legislative Rule Making January 2006 - December 2009

<i>Program</i>	<i>Adoption</i>	<i>Adoption Date</i>	<i>WAC Chapter</i>	<i>Chapter Title</i>
Air Quality	1.	7/26/2006	173-430	Agricultural Burning
	2.	6/19/2008	173-407	Carbon Dioxide Mitigation Program
			173-218	Underground Injection Control Program
	3.	5/20/2009	173-460	Controls for new sources of toxic air pollutants
			173-400	General regulation for air pollution sources
Hazardous Waste and Toxics Reduction	4.	6/30/2009	173-303	Dangerous Waste Regulations
Shorelands and Environmental Assistance	5.	1/2/2007	173-18	Shoreline management act — streams and rivers constituting shorelines of the state
			173-20	Shoreline management act — lakes constituting shorelines of the state
			173-22	Adoptions of designations of wetlands associated with shorelines of the state
			173-27	Shoreline management permit and enforcement procedures
	6.	9/3/2009	173-700	Wetland mitigation banks

Waste 2 Resources	7.	11/7/2006	173-900	Electronic Products Recycling Program
	8.	5/24/2007	173-308	Biosolids Management
Waste 2 Resources and Hazardous Waste and Toxics Reduction	9.	10/5/2007	173-900	Electronic Products Recycling Program
			173-303	Dangerous Waste Regulations
Spill Prevention, Preparedness & Response	10.	9/25/2006	173-180	Facility oil handling standards
			173-184	Vessel oil transfer advance notice and containment requirements
	11.	9/25/2006	173-182	Oil spill contingency planning
Toxics Cleanup Program	12.	10/12/2007	173-340	Model Toxics Control (MTCA) Act
Water Quality	13.	1/3/2006	173-216	Chapter 173-216 WAC State waste discharge permit program
			173-218	Chapter 173-218 Underground Injection Wells
	14.	11/20/2006	173-201A	Water Quality Standards For Surface Waters Of The State Of Washington

Water Resources	15.	5/15/2006	173-503	Instream Resources protection Program - Lower and Upper Skagit Water Resources Inventory Area (WRIA 3 and 4)
	16.	11/21/2006	173-160	Minimum standards for construction and maintenance of wells
			173-162	Regulation and licensing of water well contractors and operators
	17.	8/2/2007	173-532	Water Resources Program for the Walla Walla Basin, WRIA 32
	18.	12/12/2007	173-545	Instream resources protection program— Wenatchee River basin, water resources inventory area (WRIA) 45
	19.	12/19/2008	173-527	Water Resources Management Program for the Lewis Basin
			173-592 (repealed)	Reservation of Future Public Water Supply for Clark County Ground Water Reservation
	20.	12/19/2008	173-528	Water Resources Management Program for the Salmon-Washougal Basin
			173-592 (repealed)	Reservation of Future Public Water Supply for Clark County Ground Water Reservation
	21.	12/19/2008	173-160	Minimum Standards for Construction and maintenance of Water Wells
22.	11/30/2009	173-517	Quilcene-Snow Instream Resources Protection and Water Management Program	

It is hard to say if the requirements in RCW 34.05.328 directly affected the substance of the above mentioned rules. However, Ecology found compliance with this section is valuable to the rule-making process by:

1. Enhancing the decision-making process;
2. Increasing information sharing with the public; and
3. Creating a shared framework that becomes the basis for dialogue between Ecology and interested parties about the content of rule language.

1. Enhances Decision Making:

Section 328 requires Ecology make several determinations related to the rule prior to adoption. As a result, employees make more thoughtful and planned decisions related to rule-making. Ecology formally documents decisions related to the rule content. This documentation helps Ecology record why we included, or did not include, certain content in the final rule adoption. Section 328 requirements mandate Ecology must consider economic impacts when drafting the rule.

These tools provide Ecology with information we use, in combination with relevant science, in evaluating draft rule proposals. In the end, Ecology:

- Looks at a broader range of information,
- Documents what data the agency reviewed, and
- Records information that supports the final determinations made by the agency.

2. Increases Information Sharing:

To comply with the requirements in section 328, Ecology must write several documents to show Ecology:

- Made the “determinations” required, and
- Can show what information supports these determinations.

To help share this information, we developed templates to standardize how employees prepare the information and present it to the public. Over time, interested parties have shown an increased expectation for the documents and more awareness of the types of information they contain. Often interested parties will use this information when submitting comments or requests to make changes in the rule.

3. Shared Framework for Dialogue:

Comments received on the economic analyses have opened up conversations between Ecology and interested parties about the content of the proposed rule. These conversations lead to language changes Ecology incorporates into the final rule. Interested parties indicate they are now better informed and feel they can submit better comments to Ecology on the rule language. They feel the economic analyses help them understand why Ecology must include certain language in the rule over

other suggested options. Specific comments from interested parties help staff understand the nature of their concerns and find ways to engage them in conversation.

Additional costs.

Summary of Additional Costs Associated with Significant Legislative Rule-making.

Ecology does not track the additional costs associated with the section 328 requirements separately from other rule-making activities. In most cases, conducting the extensive economic analysis required and informing and educating those affected by the rule create additional costs. It is likely that we would have addressed many of the requirements in the absence of RCW 34.05.328.

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.

Between January 2006 and December 2009, there were no legal actions against Ecology for failure to comply with RCW 34.05.328.

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, these requirements do not adversely affect the capacity of Ecology to fulfill its legislatively prescribed mission. Often times, varying interest groups involved in the public process will focus on certain aspects of the significant legislative analyses. They will use these analyses to ask Ecology to make changes in the rule proposal. This too adds to the time necessary to adopt a rule, although it does result in more contact between Ecology and interested parties.

Rule acceptability.

Descriptions of any measurable increase or decrease in the acceptability by the regulated community of rules adopted under these requirements.

Because of the section 328 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. In several cases, interested parties stated they may not like what they see in the rule, but, because of reading the significant legislative documentation, they understand why Ecology made the decision to adopt the particular rule language.

Interested party comments.

Comments from counties, cities, businesses, labor, and environmental organizations on the impacts significant legislative rule-making requirements.

Depending on the content of the rule, and the parties affected by the proposed rule, interested parties have expressed both positive and negative impacts of the significant legislative rule-making requirements.

Not all procedural requirements are a primary concern to the regulated community. Quite often, they do not understand the need to use resources to complete the analyses. Nor do they appreciate the delays caused while Ecology works to comply with section 328. For these groups, they are not sure whether the delay in rule-adoption is a fair trade for the improved quality of the rule resulting from the rule-making requirements.

On the other hand, some interested parties tell us they appreciate the additional information offered as a result of documents prepared to meet the section 328 requirements. They indicate they can better understand why certain decisions are made by Ecology and they feel better prepared to offer comments and suggestions during the process.

Washington State Department of Fish & Wildlife

1. Rules adopted
 - a. WAC 220-110-020, Definitions;
 - b. WAC 220-110-030, Hydraulic project approvals – Procedures;
 - c. WAC 220-110-031, Pamphlet hydraulic project approvals – Procedures;
 - d. WAC 220-110-200, Mineral prospecting technical provisions;
 - e. WAC 220-110-201, Common mineral prospecting technical provisions;
 - f. WAC 220-110-202, Use of Class 0 mineral prospecting equipment;
 - g. WAC 220-110-206, Authorized work times and watercourses for mineral prospecting and placer mining projects by specific watercourse, except the Columbia and Snake rivers, lake, salt waters and waters within National Park boundaries using Class I and II equipment;
 - h. WAC 220-110-340, Informal appeal of adverse administrative decisions;
 - i. WAC 220-110-350, Formal appeal of administrative decisions;
 - j. WAC 220-110-360, Penalties;
2. Rules repealed
 - a. WACs 220-110-203, Use of Class I mineral prospecting equipment;
 - b. WAC 220-110-204, Use of Class II mineral prospecting equipment;
 - c. WAC 220-110-205, Use of Class III mineral prospecting equipment;
 - d. WAC 220-110-207, Authorized work times and watercourses for mineral prospecting and placer mining projects in the Columbia and Snake rivers, lakes, salt waters and waters within National Park boundaries;
 - e. WAC 220-110-208, Authorized work times and watercourses for mineral prospecting and placer mining projects;
 - f. WAC 220-110-209, Authorized work times and watercourses for mineral prospecting and placer mining projects using Class 0 equipment only.
3. How compliance with RCW 34.05.328 affected the substance of the rule
 - a. Compliance with this section did not affect the substance of the rule
4. The cost of adopting these rules totaled approximately \$208,864 (see attached spreadsheet for cost breakdown)
5. Legal action challenging rules and cost of responding to challenge
 - a. None
6. Any adverse effect of rule adoption on agency mission
 - a. None
7. Extent to which compliance with section influenced acceptance of rules by public
 - a. Stakeholders participated in workgroup to develop rules. No challenges to the rules by stakeholders after adoption.

Pat Chapman
Department of Fish and Wildlife
Regulatory Services Coordinator
Pat.chapman@dfw.wa.gov
360/902-2571

Estimated Costs for G&F Rule Development and Pamphlet Production

Workgroup Process	\$189,879
Rule Adoption Hearing Prep	\$5,010
Pamphlet Production	\$13,975
Grand Total	\$208,864

Significant Legislative Rule Making Report

November 2005 – October 2007



Significant Legislative Rule Making Report

November 2005 – October 2007



For more information or additional copies of this report contact:

Office of the Secretary
Legislative, Policy and Constituent Relations
101 Israel Road SE
Post Office Box 47890
Olympia, Washington 98504-7880

Phone: 360.236.4042

FAX: 360.586.7424

Mary C. Selecky
Secretary of Health

Introduction

In 1995 the legislature required certain state agencies, including the Department of to apply a cost/benefit analysis when making rules changes that:

- Adopt substantive provisions of law pursuant to 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 probable quantitative and qualitative costs and benefits of the rule, and make a finding that the probable benefits exceed the probable costs (cost-benefit analysis). The agency must also demonstrate that the proposed rule is the least burdensome choice among other alternatives considered. 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 54 significant legislative rules adopted from November 2005 through October 2007 by the Department of Health, the State Board of Health, and the 16 health professions boards and commissions with independent rule-making authority.¹ Department staff members develop and implement the rules adopted by the health professions boards and commissions and 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 this period.
- Any adverse effects of the significant legislative rule making requirements.
- The impact of significant rule requirements on public acceptance of the rules.
- Stakeholder comments about the significant rule making process.

Table 1 describes the significant legislative rules adopted during this period by: WAC chapter, general subject matter, adopting authority, final adoption (filing) month and year, and cost of adopting each rule.

Table 1. Department of Health and Related Boards and Commissions Significant Legislative Rules, Adopted November 2005 through October 2007

Source: DOH Official Rule Making Files

¹ The 2005-2007 total compares to 37 significant legislative rules adopted from November 2003 through October 2005 by the department, State Board of Health and health professions boards and commissions.

WAC Chapter	General Subject Matter	Adopting Authority	Final Adoption	Rule Cost
246-249	Naturally Occurring and Accelerator-Produced Radioactive Material	Secretary, DOH	Nov. 2005	\$6,044
246-812	Denturists - Continuing Competency	Department of Health (DOH)	Nov. 2005	\$1,790
246-847	Client Treatment Option Review	Occupational Therapy Practice Board	Dec. 2005	\$5,013
246-847	Continuing Competency Required for License Renewal	Occupational Therapy Practice Board	Dec. 2005	\$6,306
246-847	Sexual Misconduct	Occupational Therapy Practice Board	Dec. 2005	\$5,061
246-847	AIDS Education and Training	Occupational Therapy Practice Board	Dec. 2005	\$5,031
246-272A	On-Site Sewage Treatment Products	DOH/State Board of Health	Dec. 2005	\$5,911
246-926	Diagnostic Radiologic Technologists	Secretary, DOH	Dec. 2005	\$3,583
246-926	Radiologic Technologists – Parenteral Procedures	Secretary, DOH	Dec. 2005	\$3,583
246-808	Supervision of Auxiliary Staff, Students, and Post-Graduate Trainees	Chiropractic Quality Assurance Commission	Jan. 2006	\$1,392
246-918, 246-919	Sexual Misconduct	Medical Quality Assurance Commission	Jan. 2006	\$21,376

WAC Chapter	General Subject Matter	Adopting Authority	Final Adoption	Rule Cost
246-808	Continuing Education Requirements for License Renewal	Chiropractic Quality Assurance Commission	Jan. 2006	\$1,400
246-650	Newborn Screening	State Board of Health	Jan. 2006	\$29,875
246-217	Food Worker Cards	State Board of Health	Jan. 2006	\$4,002
246-817	Continuing Education Requirements for License Renewal	Dental Quality Assurance Commission	Mar. 2006	\$2,621
246-808	Amending Key Definitions	Chiropractic Quality Assurance Commission	Apr. 2006	\$531
246-828	Minimum Education Requirements for Licensure	Board of Hearing and Speech	Apr. 2006	\$2,347
246-817	Dental Hygienists - Close Supervision by a Dentist	Dental Quality Assurance Commission	June 2006	\$738
246-101	Special Conditions-AIDS and HIV, Confidential Reporting	State Board of Health	Aug. 2006	\$16,775
246-500	Handling of Human Remains	State Board of Health	Aug. 2006	\$10,900
246-919	Medical Licensure - Interstate Reciprocity	Medical Quality Assurance Commission	Aug. 2006	\$997
246-809	Licensure of Mental Health Therapists	Secretary, DOH	Aug. 2006	\$6,978
246-915	Sharp Debridement – Education and Training Required	Board of Physical Therapy	Aug. 2006	\$30,391

WAC Chapter	General Subject Matter	Adopting Authority	Final Adoption	Rule Cost
246-16	Sexual Misconduct – Model Rules for Health Professions	Secretary, DOH	Sep. 2006	\$11,831
246-828	Approved Institutions of Higher Education	Board of Hearing and Speech	Sep. 2006	\$1,854
246-872	Automated Drug Distribution Devices	Board of Pharmacy	Nov. 2006	\$2,209
246-310	Kidney Dialysis Centers – Certificate of Need	Secretary, DOH	Dec. 2006	\$64,449
246-847	Examination for Licensure	Occupational Therapy Practice Board	Dec. 2006	\$2,689
246-290	Group A Public Water Systems – Water Use Efficiency	Secretary, DOH	Dec. 2006	\$435,691
246-918, 246-919	Use of Lasers, Light, Radiofrequency and Plasma as Applied to the Skin	Medical Quality Assurance Commission	Jan. 2007	\$30,406
246-934	Sexual Misconduct	Veterinary Board of Governors	Feb. 2007	\$1,366
246-828	Continuing Education Requirements for License Renewal	Board of Hearing and Speech	Mar. 2007	\$2,176
246-915	Licensing Applicants from Unapproved Schools	Board of Physical Therapy	Mar. 2007	\$12,256
246-329	Child Birth Centers – Health and Safety Standards	Secretary, DOH	Mar. 2007	\$21,178
246-843	Sexual Misconduct	Board of Nursing Home Administrators	Mar. 2007	\$1,572

WAC Chapter	General Subject Matter	Adopting Authority	Final Adoption	Rule Cost
246-860	Sexual Misconduct	Board of Pharmacy	Mar. 2007	\$2,128
246-854	Osteopathic Physician's Assistants - Prescriptions	Board of Osteopathic Medicine and Surgery	Mar. 2007	\$2,632
246-853	Licensure –Approved Colleges and Schools	Board of Osteopathic Medicine and Surgery	Mar. 2007	\$1,093
246-930	Sexual Offender Treatment Provider – Professional Experience Requirements	Secretary, DOH	Apr. 2007	\$3,948
246-828	Sexual Misconduct	Board of Hearing and Speech	Apr. 2007	\$1,263
246-853	Osteopathic Physician Assistants – Training, Scope of Practice	Osteopathic Board of Medicine and Surgery	May 2007	\$3,029
246-853, 246-854	Pain Management	Osteopathic Board of Medicine and Surgery	May 2007	\$4,812
246-922	Pain Management	Podiatric Medical Board	May 2007	\$4,812
246-924	Parenting Evaluation Standards	Board of Psychology	Jun. 2007	\$22,028
246-853, 246-854	Sexual Misconduct	Osteopathic Board of Medicine and Surgery	Jun. 2007	\$1,996
246-922	Sexual Misconduct	Podiatric Medical Board	Jun. 2007	\$1,996

WAC Chapter	General Subject Matter	Adopting Authority	Final Adoption	Rule Cost
246-922	Scope of Practice – Anesthesia Services	Podiatric Medical Board	Jun. 2007	\$1,536
246-863, 246-869	Pharmacies’ and Pharmacists’ Responsibility	Board of Pharmacy	Jun. 2007	\$88,804
246-203	Disposal of Dead Animals	State Board of Health	Jul. 2007	\$18,106
246-935	Animal Health Care Tasks for Veterinary Technicians	Veterinary Board of Governors	Aug. 2007	\$1,314
246-933	Expanding Continuing Education Options for License Renewal	Veterinary Board of Governors	Oct. 2007	\$1,337
246-836	Naturopathic Physicians - Scope of Practice; Prescription Authority	Secretary, DOH	Oct. 2007	\$5,758
246-933	Licensing Foreign Trained Veterinarians	Veterinary Board of Governors	Oct. 2007	\$3,244
246-836	Retired Volunteer Emergency Medical Workers Licensure	Secretary, DOH	Oct. 2007	\$5,758

Costs of Developing and Adopting Significant Legislative Rules

Significant legislative rules generally cost more to adopt than rules that are “not significant.” The agency and State Board of Health spent \$935,916 to develop the 54 significant legislative rules adopted from November 2005 through October 2007, compared with total costs of \$213,183 to adopt 46 “non-significant” rules during the same period. The average cost per rule was \$17,998 for significant rules, compared to \$4,634 per rule for non-significant rules. Figures 1 and 2 illustrates these cost differences.

Figure 1.
Cost of Adopting 54 Significant Rules Compared to 46 Non-Significant Rules
Adopted from November 2005 Through October 2007 -
Department of Health, State Board of Health, and
Health Professions Boards and Commissions

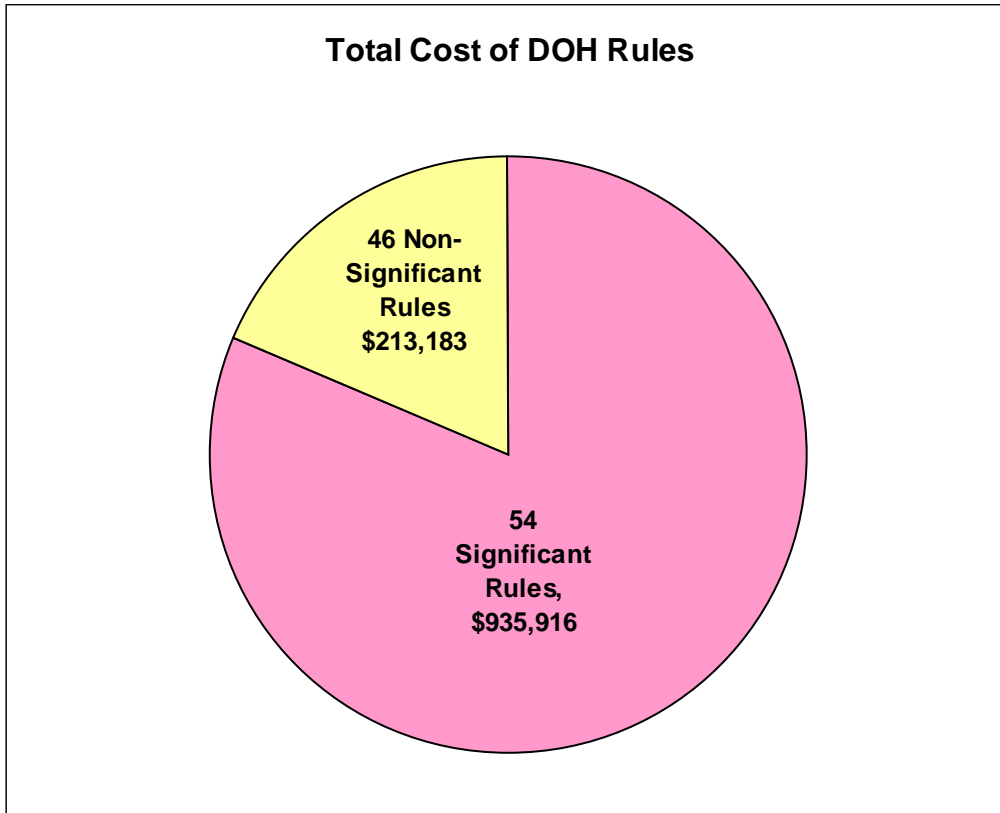
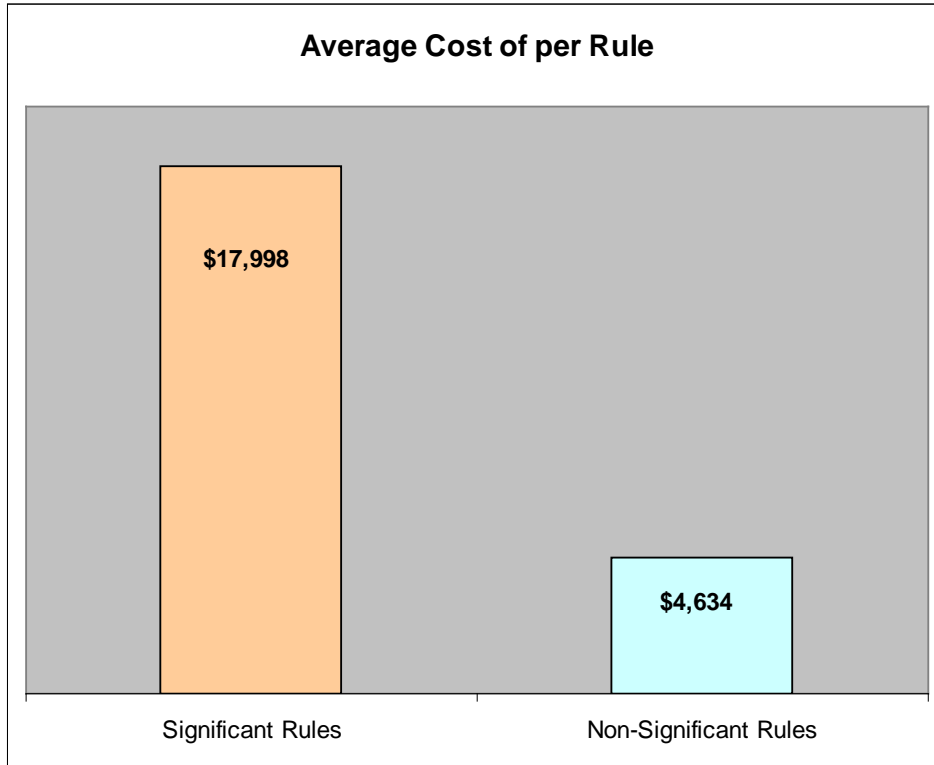


Figure 2.
Average Cost of Rule Adoption
54 Significant DOH Rules Compared to 46 Non-Significant Rules
Adopted from November 2005 Through October 2007 –
Department of Health, State Board of Health, and
Health Professions Boards and Commissions



Source for Figures 1 and 2:
 DOH official rule files November 2005 through October 2007 – “Final Cost of Rule-Making” Reports

Of particular note, the \$435,691 cost of developing the water use efficiency rule - chapter 246-290 WAC - is nearly half the cost of the total significant rulemaking during the department’s entire reporting period. The water use efficiency rule took more than three years of extensive public and stakeholder involvement and outreach.

Costs of adopting the department’s significant legislative rules reflect staff time to develop the rule, preparation of cost-benefit analyses, public meetings (including workshops, rule drafting meetings, and formal hearings), printing, postage, administrative costs, and where appropriate preparation of *small business economic impact statements* or *SBEIS* (twelve significant rules adopted in this period required both a cost-benefit analysis and a SBEIS). The costs do not reflect the time and expense by public stakeholders to participate in rule development, nor the time of appointed board and commission members to attend meetings and public hearings. To help manage costs, boards and commissions typically schedule rule development workshops and public rules hearings as part of their regular business meetings.

Inviting extensive stakeholder participation in rule development is a core value of the Department. Although this level of public involvement increases the overall cost of rule making, the Department has found these efforts tend to increase public acceptance of the rules.

Legal Actions

There have been no legal actions alleging that the department failed to comply with the significant legislative rule requirements of RCW 34.05.328 during this reporting period.

There were legal actions regarding two significant legislative rules during this reporting period:

- *American Laser Centers LLC, et al, vs. Washington State Department of Health and Medical Quality Assurance Commission*, Thurston County Superior Court No. 07-02-00443-0. The petitioners sought to block implementation of amended chapters 246-918 and 246-918 WAC regarding medical supervision of the use of lasers, light, radiofrequency and plasma as applied to the skin. The rules were adopted by the Medical Quality Assurance Commission as WSR 07-03-177 in January 2007. The petition in part questioned some of the estimated costs to affected businesses described in the cost-benefit analysis prepared for the rule. However, the petitioners withdrew their complaint without going to trial, and the court dismissed the case.
- *Storman's Inc., dba Ralph's Thriftway, et al, vs. Mary Selecky, Laurie Jenkins, and members of the State Board of Pharmacy*, U.S. District Court for the Western District of Washington civil action No.C07-5374RBL. The suit did not challenge the validity of the cost-benefit analysis for this rule or the rule-making process. Petitioners filed a civil rights complaint and motion for declaratory and injunctive relief regarding implementation of amended chapter 246-863 and 246-869 WAC regarding pharmacists' and pharmacies' responsibilities to fill valid prescriptions. The rules were adopted by the Board of Pharmacy as WSR 07-14-025 in June 2007. In November 2007 the federal court granted a preliminary injunction blocking enforcement of portions of WAC 246-863-095 and 246-869-010 against a pharmacist or pharmacy that refuses to dispense Plan B contraceptive and instead refers the patient to the nearest alternative source of Plan B. A trial is scheduled for October 2008.

Adverse Effects of Compliance With The Regulation

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

During this reporting period, the average significant legislative rule took 33 months to complete the rule-making process (the range was 4 months to 137 months). "Non-

significant” rules adopted during this same period were completed in 20 months on average.

(The months to complete significant and non-significant rules were counted beginning with filing the CR-101 preproposal statement of inquiry notice – or CR-102 proposed rule if a CR-101 was not required -- and ending with filing of the CR-103 permanent rule adoption order. The time periods do not count the substantial staff effort and time leading up to filing a CR-101 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, boards and commissions members, and the program staff 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 – some times 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 may be 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 is clear and readily available, the analysis is easier to conduct. If data is not readily available, the department must devote additional staff and resource 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. For example, requiring X-ray shielding devices and structures will protect patients and health professionals from potentially harmful radiation doses, but quantifying the incremental benefit of this requirement per patient or employee is very difficult. In these situations, the department must often rely on qualitative measures to estimate the benefits of a rule.

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 significant rules and non-significant rules.

We have not received stakeholder comments generally about the department's compliance with significant rule making requirements. However, stakeholders commenting on certain proposed rules have raised questions about the data and conclusions in specific preliminary cost-benefit analyses.

One notable example in this reporting period was the Board of Pharmacy's pharmacist and pharmacy responsibility rules. During the public comment period on the proposed rule, some commenters questioned the methodology used to estimate both quantitative and qualitative costs and benefits in the preliminary analysis prepared by the department under the 1995 law. (The department staffs the sixteen independent health professions boards and commissions, and provides most of the staff work for rules adopted by the State Board of Health.) At the Pharmacy Board's request, the department examined the issues raised in the public comments. Staff then revised the cost-benefit analysis for the final rule adoption, providing more information on how probable costs to pharmacies from the rule were determined, and adding data from published reports to support estimates of poor health outcomes – and costs - that may result from non-compliance with the rule. The Pharmacy Board adopted the permanent rule in June 2007, and since then the board has not received further comment or challenge to the cost-benefit analysis for this rule.

Significant Legislative Rule-Making Report

November 2007 – October 2009



Significant Legislative Rule-Making Report

November 2007 – October 2009



For more information or additional copies of this report contact:

Office of the Secretary
Legislative, Policy and Constituent Relations
101 Israel Road S.E.
Post Office Box 47890
Olympia, Washington 98504-7880

Phone: 360-236-4042

FAX: 360-586-7424

Mary C. Selecky
Secretary of Health

Introduction

In 1995 the 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 probable benefits exceed the probable costs (cost-benefit analysis). The agency must also demonstrate that the proposed rule is the least burdensome choice among other alternatives considered. 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 38 significant legislative rules adopted and filed with the Code Reviser from November 2007 through October 2009 by the Department of Health, the State Board of Health, and the 16 health professions boards and commissions with independent rule-making authority. 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: WAC chapter, general subject matter, adopting authority, filing month and year, and cost of adopting each rule.

**Table 1. Significant Legislative Rules Adopted and Filed
With the Code Reviser November 2007 through October 2009**

Source: Department of Health Official Rule-Making Files

WAC Chapter	General Subject Matter	Adopting Authority	Final Adoption	Rule Cost
246-75	Medical Marijuana	Secretary, Health	Oct. 2008	\$88,381
246-100	Sexually Transmitted Diseases – Duties and Authorities	State Board of Health	Nov. 2009	\$16,952
246-105	Repealing the Existing Chapter and Creating A New Chapter - Immunization of Child Care and School Children Against Certain Vaccine-Preventable Diseases.	State Board of Health	Dec. 2008	\$18,365
246-225A	Radiation Safety and Diagnostic Image Quality Standards for Dental Facilities	Secretary, Health	June 2008	\$11,602
246-282	Vibrio Parahaemolyticus Control Plan	State Board of Health	May 2008	\$32,996
246-282	Vibrio Parahaemolyticus Control Plan - Amendments Per 2008 Data	State Board of Health	April 2009	\$33,237
246-290	Group A Public Water Supplies: Long Term 2 Enhanced Surface Water Treatment	Secretary, Health	Jan. 2008	\$337,828
246-310	Non-emergent Interventional Cardiology Standards	Secretary, Health	Dec. 2008	\$172,207
246-320	Hospital Licensing Rules (Operation Standards Only)	Secretary, Health	March 2009	\$21,955
246-330	Ambulatory Surgical Facilities	Secretary, Health	April 2009	\$74,955
246-650	Newborn Screening	State Board of Health	June 2008	\$66,743
246-809	Examination for Licensed Mental Health Counselors	Secretary, Health	April 2008	\$1,720
246-809	Licensed Counselors - - Adding New Associate Level Professions	Secretary, Health	July 2009	\$9,298

WAC Chapter	General Subject Matter	Adopting Authority	Final Adoption	Rule Cost
246-811	Chemical Dependency Professionals (CDP) – Amending to Include Requirements for Trainees	Secretary, Health	June 2009	\$4,203
246-815	Dental Hygiene – Education Requirements for Licensure Applicants	Secretary, Health	Nov. 2007	\$865
246-815	Dental Hygiene – Off-site Supervision	Secretary, Health	June 2008	\$9,543
246-817	Sexual Misconduct – Dentists	Dental Quality Assurance Commission	Dec. 2007	\$5,116
246-817	Dental Assistants and Expanded Function Dental Assistants – Credentialing and Scope of Practice Requirements	Dental Quality Assurance Commission	June 2008	\$64,086
246-817	Licensure Without Examination for Dentists	Dental Quality Assurance Commission	Nov. 2008	\$6,938
246-817	Dental Licensure – Initial Eligibility and Application Requirements and Examination Content	Dental Quality Assurance Commission	Nov. 2008	\$6,609
246-817	Dental Resident License to Full Dental License – Conditions	Dental Quality Assurance Commission	Nov. 2008	\$9,834
246-817	Administration of Anesthetic Agents for Dental Procedures	Dental Quality Assurance Commission	Jan. 2009	\$82,726
246-817	Volunteer Dental Assistant Providing Services in Charitable Dental Clinics- Adding Definitions	Dental Quality Assurance Commission	July 2009	\$3,769
246-840	Application and Licensure of Nurses (RNs, LPNs and ARNPs)	Nursing Care Quality Assurance Commission	May 2008	\$2,383
246-840	Advanced Registered Nurse Practitioners	Nursing Care Quality Assurance Commission	Dec. 2008	\$164,769

WAC Chapter	General Subject Matter	Adopting Authority	Final Adoption	Rule Cost
246-840	Nurse Delegation	Nursing Care Quality Assurance Commission	Feb. 2009	\$10,030
246-841	Nursing Assistants – Standards of Practice and Competencies	Nursing Care Quality Assurance Commission	March 2008	\$13,770
246-853	Osteopathic Physicians – Use of Laser, Light, Radiofrequency, and Plasma Devices As Applied to the Skin	Board of Osteopathic Medicine and Surgery	Oct. 2008	\$4,574
246-889	Suspicious Transactions and Reporting Requirements	Board of Pharmacy	Nov. 2007	\$9,116
246-901	Pharmacy Technician Education, Training, and Certification	Board of Pharmacy	Oct. 2008	\$14,647
246-915	Physical Therapist Assistants – Licensing and Supervision Requirements	Board of Physical Therapy	Aug. 2008	\$45,607
246-916	Athletic Trainers – Licensure Requirements	Secretary, Health	May 2008	\$12,162
246-924	Sexual Misconduct – Psychologist	Examining Board of Psychology	Nov. 2007	\$5,946
246-924	Psychologist – Education and Experience Requirements Prior to Licensing	Examining Board of Psychology	Dec. 2007	\$19,763
246-935	Veterinary Technicians – Continuing Education	Veterinary Board of Governors	Oct. 2008	\$1,413
246-935	Health Care Tasks and Responsibilities of Veterinarians Supervising a Veterinary Technician or an Unregistered Assistant	Veterinary Board of Governors	July 2009	\$2,861
246-935	Eligibility for Examination as Veterinary Technician	Veterinary Board of Governors	Oct. 2009	\$476

WAC Chapter	General Subject Matter	Adopting Authority	Final Adoption	Rule Cost
246-811, 246-809, 246-810, and 246-930	Sexual Misconduct – Chemical Dependency Professionals; Licensed Marriage and Family Therapists, Mental Health Counselors, Advanced Social Workers, Independent Clinical Social Workers; Registered Counselors, Hypnotherapists; and Sex Offender Treatment Providers	Secretary, Health	March 2008	\$2,978

In comparison to the previous reporting period, the Department of Health, State Board of Health, and related boards and commissions adopted fewer significant legislative rules (38 compared to 54). However, the complexity of the 38 rules has increased, and the analyses have required additional staff time and resources. Changes in staff work load and available resources have also made it necessary to set priorities for the rule making efforts. Patient safety and legislative mandates are the highest priority.

The Department, State Board of Health, and the related boards and commissions have also increased the number of rules processed using the expedited rule-making process and the exception rule-making process, four and 25 respectively. This has resulted from an increase in rules adopted to incorporate national consensus codes, requirements that explicitly and specifically are dictated by statute, and rules that set or adjust fees to meet legislative standards.

We have also needed to adopt an increased number of emergency rules. Immediate adoption of the rules was necessary to preserve public health and safety, and also to meet federal laws and deadlines for state receipt of federal funds. Six emergency rules were adopted by during this time period.

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 boards and commissions spent \$1,387,089 to develop the 38 significant legislative rules adopted from November 2007 through October 2009, compared with total costs of \$137,155 to adopt 37 “non-significant” rules during the same period. The average cost per rule was \$36,502 for significant rules, compared to \$3,707 per rule for non-significant rules. Figures 1 and 2 illustrate these cost differences.

Figure 1.
Total Cost of Adopting Significant Rules Compared to
Non-Significant Rules from November 2007 through October 2009s

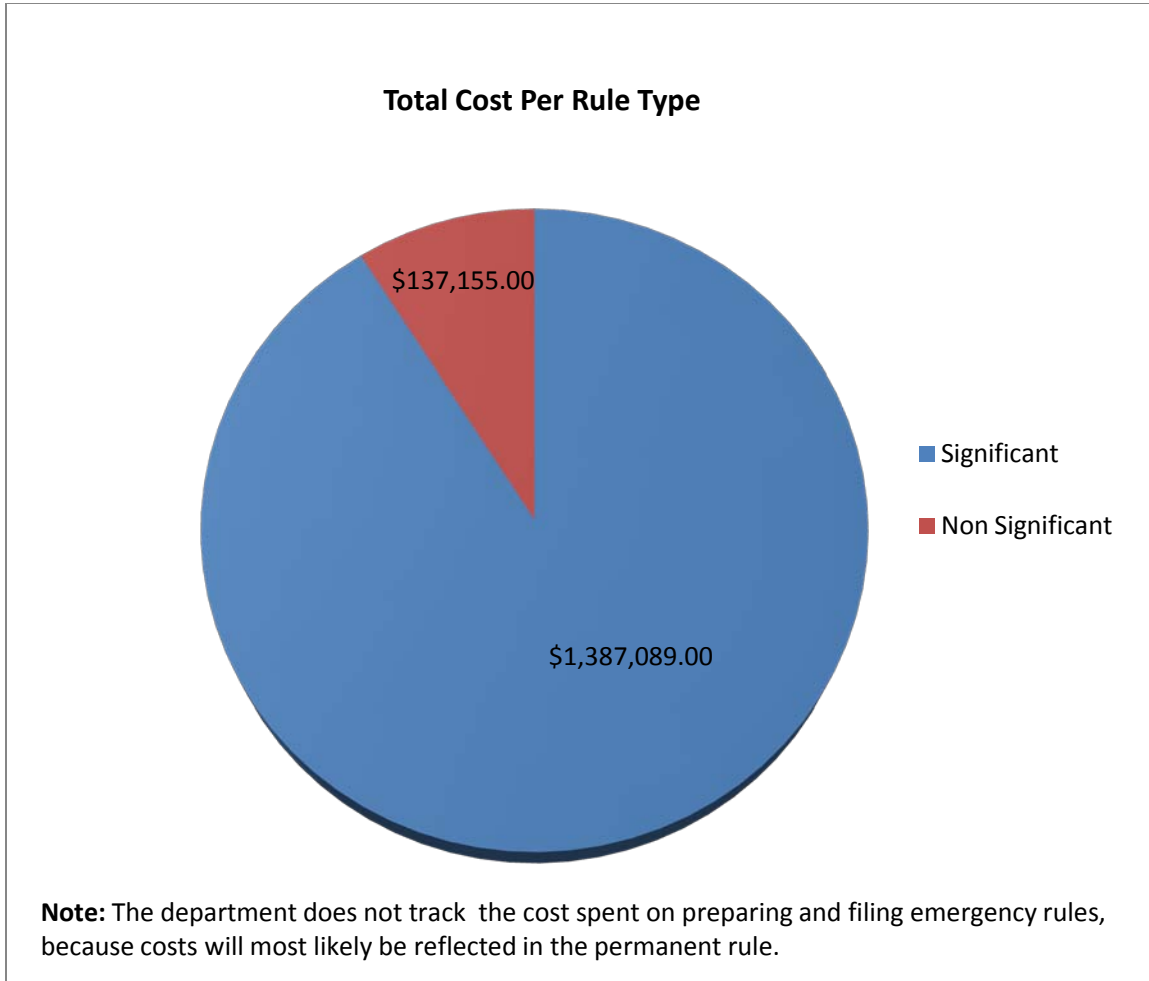
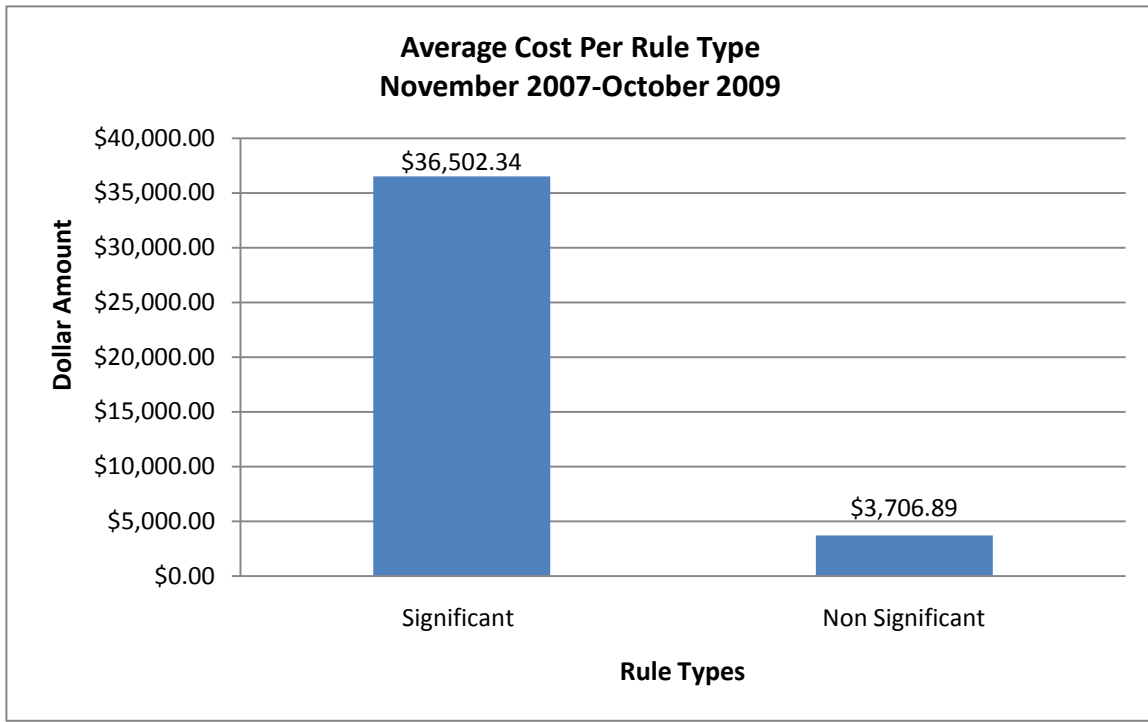


Figure 2.
Average Cost of Adopting Significant Rules Compared to
Non-Significant Rules from November 2007 through October 2009



Source for Figures 1 and 2:
 Department of Health official rule files November 2007 through October 2009 – “Final Cost of Rule-Making” **Reports**

The most costly rule, totaling \$337,828, was the Group A Public Water Supplies rule. The Department revised the existing rule to include requirements outlining the Municipal Water Law passed by the Washington State Legislature. The law speaks to water system capacity, water system planning, watershed planning, and inter-agency coordination. As a part of this same rule making, the Department also adopted the federal Long Term 2 Enhanced Surface Water Treatment Rule as required by the U.S. Environmental Protection Agency. This rule took about three years to complete. A large number of stakeholders were affected by this rule. Staff members spent an extensive amount of time for public and stakeholder involvement and outreach, which greatly increased the cost of this rule. In addition, the subject matter of this rule required a large number of staff members versed in specific specialized topics. This affected costs for staff salaries and benefits. The Department also conducted two public hearings, one in Spokane and one in Lacey. Typically the Department conducts only one public hearing per rule.

Costs of adopting significant legislative rules reflect 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), printing, postage, administrative costs, and, where appropriate, preparation of *small business economic impact statements or SBEIS* (nine significant rules adopted in this period required both a

cost-benefit analysis and a SBEIS). A large number of stakeholders, which many times requires an above-average number of stakeholder meetings, can also increase 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 extensive stakeholder participation in rule development is a core value of the Department, State Board of Health and the related boards and commissions. Although this level of public involvement increases the overall cost of rule making, it has been found these 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 boards and commissions failed to comply with the significant legislative rule requirements of RCW 34.05.328 during this reporting period.

However, there was legal action regarding one significant legislative rule during this reporting period: *Yakima Valley Memorial Hospital, vs. Washington State Department of Health, Mary Selecky, Secretary of Health, and Robert McKenna, Attorney General*, U.S. District Court for the Eastern District of Washington at Yakima. The complaint does not challenge the validity of the cost-benefit analysis for this rule or the rule-making process. Petitioners asked that the Court enter a judgment to modify the standards in WAC 246-310-745 and WAC 246-310-720, to allow reallocation of patient volume at Certificate of Need-approved hospitals back to the planning area for proposed new programs, and to create a “floor” that prevents the establishment of a new program only if it would cause an existing provider in the same planning area to fall below minimum volume levels. In addition, they asked that the common mathematical principles of rounding be used to determine need, and change the minimum volume standard to 200 per year. The rules were adopted by the Department of Health as WSR 09-01-113 in December 2008. This case was set for oral argument on December 16, 2009, on summary judgment motions.

Adverse Effects of Compliance with the Regulation

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

During this reporting period, the average significant legislative rule took 22 months to complete the rule-making process (the range was five to 98 months). “Non-significant” rules adopted during this same period were completed in six months on average. The months to complete significant and non-significant rules were counted beginning with filing the CR-101 preproposal statement of inquiry notice – or CR-102 proposed rule if a

CR-101 was not required -- and ending with filing of the CR-103 permanent rule adoption order. The time periods do not count 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 is clear and readily available, the analysis is easier to conduct. If data is 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. For example, chapter 69.51 RCW directs the Department of Health to adopt rules defining a presumptive 60-day supply of marijuana for qualifying patients. While there may be a cost savings to law enforcement, the court system, and defendants/patients, there is no way to quantitatively calculate the cost savings benefit that results from clarifying what a 60-day supply is. In these situations, the department must often rely on qualitative measures to estimate the benefits of a rule.

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 significant rules and non-significant rules.

We have not received stakeholder comments generally about compliance with significant rule-making requirements. However, stakeholders commenting on specific proposed rules have raised questions about the data and conclusions in the related preliminary cost-benefit analyses. In some instances the Department has made amendments to the preliminary cost-benefit analyses to provide clarity or incorporate additional data.

Addendum To Significant Legislative Rule-Making Report

November 2007 – October 2009

The following tables address significant legislative rules by the Department of Health, State Board of Health, and related boards and commissions for the time period of November 2009 through December 2009. Table A shows significant legislative rules that were adopted and filed with the Code Reviser in November 2009 and their related costs. Table B reflects significant legislative rules the Department, State Board of Health and the related boards and commissions anticipate adopting by December 31, 2009, and the preliminary costs associated with each rule. Table C lists those potentially legislatively significant rules the Department of Health, State Board of Health, and related boards and commissions anticipate filing a Statement of Inquiry by December 31, 2009.

**Table A. Significant Legislative Rules Adopted
And Filed with Code Reviser November 2009**

Source: Department of Health Official Rule Making Files

WAC Chapter	General Subject Matter	Adopting Authority	Final Adoption	Rule Cost
246-100	Sexually Transmitted Diseases – Duties and Authorities	State Board of Health	Nov. 2009	\$16,952
246-272C	On-site Sewage System Tanks	State Board of Health	Nov. 2009	\$109,939
246-976	Trauma Registry – Department and Provider Responsibilities	Secretary, Health	Nov. 2009	\$7,286
246-976	Designation of Trauma Care Facilities	Secretary, Health	Nov. 2009	\$90,043

**Table B. Significant Legislative Rules
Anticipating Adoption by December 31, 2009**

WAC Chapter	General Subject Matter	Adopting Authority	Preliminary Cost of Rulemaking
246-100	HIV Testing, Counseling and Partner Services	State Board of Health	\$29,357
246-366A	Primary and Secondary Schools	State Board of Health	\$544,419
246-887	Scheduling Carisprodol as a Controlled Substance	Board of Pharmacy	\$22,799

**Table C. Significant Legislative Rules Anticipating
Filing a Statement of Inquiry by December 31, 2009**

WAC Chapter	General Subject Matter	Adopting Authority
246-310	Revising and Updating the Certificate of Need Adjudicative Proceedings Rules	Secretary of Health
246-840	Early Remediation Program	Nursing Care Quality Assurance Commission
246-853 and 246-854	Establish Requirements for a Retired Active Status License for Osteopathic Physicians and Surgeons and Osteopathic Physician Assistants	Osteopathic Board of Medicine and Surgery



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Mail correspondence to: PO Box 44001 • Olympia WA 98504-4001

January 15, 2010

To: Faith Lumsden, Governor's Executive Policy Office

From: Joshua Swanson, Legislative Liaison/Rules Coordinator
Department of Labor & Industries

SUBJECT: Labor & Industries Significant Legislative Rulemaking Report 2006-2009

In response to your request, the enclosed report responding to the requirements of RCW 34.05.328 for Labor & Industries. The report covers the agency's significant legislative rulemaking activities since January 1, 2006.

If you have questions, please contact me at (360) 902-6805.

cc: Judy Schurke, Director

**DEPARTMENT OF LABOR & INDUSTRIES
SIGNIFICANT LEGISLATIVE RULEMAKING REPORT 2005**

1. List of the rules L&I has adopted under significant legislative rulemaking requirements (RCW 34.05.328) since January 1, 2006.

Independent Medical Examiners, adopted November 30, 2009, WSR # 09-24-085

These changes were designed to improve the quality of the IME examination, the IME report and the worker's satisfaction with the IME process. The purpose of these rules is to ensure the medical providers who become independent medical examiners know and meet the department's requirements.

These rules demonstrate the department's willingness to address stakeholder concerns regarding the IME process and make the necessary changes. These rules also demonstrate and support the department's continuing efforts to improve quality in the process and the final product, the examination and the report which ultimately affects the resolution of workers' compensation claims.

Retrospective Rating, adopted October 26, 2009, WSR #09-22-024

This rulemaking added language to WAC 296-17-90445. It added information about how occupational disease claims are included in Retrospective Rating adjustment calculations. The language explains how chargeable claim costs are assigned to retro and non-retro employers, and that claim costs not assigned to any employer will be eliminated from the retro processes through the calculation of the performance adjustment factor.

SIMP, adopted September 30, 2009, WSR # 09-20-040

This rulemaking implemented two Health Technology Committee coverage determinations. The determinations state that certain lumbar fusion and artificial intervertebral disc replacement surgeries are covered for the treatment of chronic pain due to uncomplicated degenerative disc disease. The principal condition of coverage is that a non-invasive, structured intensive multidisciplinary program for chronic, noncancer pain (SIMP) must be completed prior to the department or self-insurer authorizing a lumbar fusion or lumbar artificial disc replacement. The department also deleted language in WAC 296-20-03002 that says the Charite artificial disc is non-covered.

Heat Related Illness, adopted June 4, 2008, WSR #08-12-109

This rulemaking adopted permanent rules relating to requirements associated with outdoor heat exposure.

Hospitalization Reporting, adopted February 8, 2008, WSR # 08-05-012

These rules were amended to provide equal protection to all employees. Employers in the Agriculture industry were required to report the hospitalization of one or more employees due to a work-related incident or accident. Employers in other industries were currently not required to report until 2 or more employees are hospitalized—these amendments changed the reporting requirement so that all hospitalizations due to work-related illness or injury are reported.

Self Insurance Continuing Education, adopted August 22, 2007, WSR # 07-16-162
Workers' Compensation Self Insurance Rules and Regulations, Chapter 296-15 WAC. This chapter governs employers who are permitted to self-insure their workers' compensation obligation pursuant to Title 51 RCW. This rulemaking modified WAC 296-15-360 to implement a continuing education curriculum in conjunction with the current requirements for recertification of department-approved claims administrators.

Workers' Compensation–Medical Aid Reduction, adopted March 12, 2007, WSR # 07-07-032

This rulemaking adopted a reduction in the Medical Aid premium base rates for work done during the six months beginning July 1, 2007, which will ultimately reduce the Medical Aid contingency reserve. During this time period, Medical Aid premiums will not be assessed for employers and workers and therefore it is anticipated that this will reduce the balance of the Medical Aid fund by \$315 million.

Formaldehyde Rules, adopted April 4, 2006, WSR # 06-08-087

This rulemaking modified the rules to require that employees be notified of exposure results over the permissible exposure limit within 5 days to meet the requirements of RCW 49-17-220 for "prompt" notification. The chapter further specifies that notification for specific rules be "In writing, as specified in the rule specific to the substance." These rules require employers to notify employees of monitoring results within five (5) days of receiving the results. Prior to this change, employers were required to provide notification within 15 days. This requirement has been changed to be consistent with the notification times for substance-specific hygiene rules.

Self Insurance Modifications, adopted February 28, 2006, WSR # 06-06-066

This rulemaking included modifications in the following areas: certification requirements, including both financial requirements and claims administration structure requirements, vocational reporting requirements, including 90-day employability assessment reports and vocational rehabilitation outcome reporting, reporting requirements when initiating and terminating time loss, financial information reporting requirements, submissions of protests and reopening applications to the department, and time frames for payment of penalties.

2. Summary of additional costs

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 analysis. As a result, the agency has required additional staff time of its economists and assistant attorneys general to develop and review cost-benefit analyses.

3. Description of any legal actions

Not applicable.

4. Adverse effects

The significant legislative rulemaking requirements did not adversely affect the capacity of the agency to fulfill its legislatively prescribed mission.

5. Rule acceptability

There have been no detectable changes in acceptability of the agency's rules by the regulated community based solely on RCW 34.05.328.

6. Stakeholder comments

No stakeholder comments were received regarding the significant legislative rulemaking requirements.

7. Other relevant information

None.

December 9, 2009

Shelby Hultman
Executive Assistant to the Director
Governor's Office of Regulatory Assistance
PO Box 43113
Olympia, WA 98504-3113

SUBJECT: Significant Legislative Rulemaking Report

Dear Ms. Hultman:

In compliance with RCW 34.05.328(6), and the Office of Financial Management (OFM) reporting requirements regarding Significant Legislative Rulemaking to the Governor and the Legislature, the Department of Natural Resources (DNR) submits the following information as requested for rules adopted between January 2006 and December 2009.

1. 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;

- a. WAC 332-100-040, Deduction Determination, adopted 1/6/06.
- b. Chapter 332-52 WAC, Public Access and Recreation, adopted 2/11/09.
- c. Chapter 332-41 WAC, SEPA Policies & Procedures, adopted 3/27/07.
- d. Chapter 332-08 WAC, Practice & Procedure, adopted 8/5/08.
- e. Chapter 332-130 WAC, Minimum Standards for Land Boundary and Chapter 332-120 WAC Survey Monuments, adopted 1/20/09.

Compliance with this section did not adversely affect the substance of the rules adopted.

2. The costs incurred by state agencies in complying with this section;

Cost to the agency was nominal; mostly staff time which it varied relative to the complexity of the rule and level of stakeholder support.

Shelby Hultman
December 9, 2009
Page 2

3. 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

4. The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

None

5. The extent to which this section has improved the acceptability of state rules to those regulated; and

The section ensured all impacts of the rules to be adopted were considered, implementation of the rules are considered during development and that the rules were improved to the acceptability of the users.

If you have any additional questions or need further assistance, please contact me at 360.902.1561 or Jamey.Taylor@dnr.wa.gov.

Sincerely,

/s/

Jamey Taylor
Agency Rules Coordinator

December 10, 2009

TO: Shelby Hultman
Governor's Office of Regulatory Assistance

FROM: Cindi L. Holmstrom, Director
Department of Revenue

**SUBJECT: REPORT ON IMPACTS OF ESHB 1010 – SIGNIFICANT LEGISLATIVE
RULEMAKING**

1. Significant Legislative Rules Adopted Since January 1, 2006

The Department of Revenue twice each year adopts one rule that we consider a significant legislative rule. The rule is WAC 458-40-660 (Rule 660), Timber Excise Tax – Stumpage Value Tables. 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. There have been no compliance problems with this rule.

2. Summary of Additional Costs Associated with Rulemaking Requirements

The additional costs of preparing the information required under ESHB 1010 for Rule 660 have been minimal, principally because the Department is required to routinely revise this rule. These costs were absorbed within the normal operations of the Department.

3. Description of Any Legal Actions for Failure to Comply

There have been no legal actions against the Department directly related to the use or non-use of regulations associated with significant rules since January 1, 2006.

4. Adverse Effects

The majority of the Department's rules are interpretive and the regulations associated with significant legislative rules have not had an adverse affect on our ability to fulfill our legislatively-prescribed mission.

5. Rule Acceptability

We cannot categorize any increase or decrease in the acceptability of our significant legislative rules by the regulated community.

6. Stakeholder Comments

As the methodology used to determine stumpage values was negotiated with the industry and county assessors, and there have been no impacts as a result of using significant legislative rule requirements, we have no stakeholder comments for the period in question.

7. Other Relevant Information

Rulemaking and the environment for rulemaking have substantially changed for the Department since 1995.

Factors that help the Department of Revenue fulfill its mission include:

- The Department's emphasis on identifying and reaching out to stakeholders to encourage their involvement early in the rule-making process. This strengthens relationships between the Department and stakeholders, encourages positive participation, and results in rules providing needed information in a useful manner.
- The Department's continuing efforts to make rulemaking information more accessible to the public. Examples include the use of electronic mail listservs to notify interested persons of the Department's interpretive statement and rulemaking actions, from preproposal stage to adoption, and the use of the Internet to make this information available to any person.
- The filing of notices with the Code Reviser to announce the issuance or cancellation of interpretive statements provides another means of notifying the public of important information made available by the Department.

Changes that at times prove to be a barrier to Department of Revenue efficiently fulfilling its mission include:

- 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.

cc: Gilbert Brewer, Assistant Director, Interpretations and Technical Advice Division
Alan Lynn, Rules Coordinator, Interpretations and Technical Advice Division

Introduction

The Department of Social and Health Services evaluates every proposed rule to determine if the requirements of [RCW 34.05.328](#) apply. Specifically, the statute requires agencies to consider:

1. If the proposed rule change meets the definition of “significant legislative rule” under RCW 34.05.328(5)(c); and
2. If the rule change indeed meets the definition, is the agency required to do a cost-benefit analysis. Many DSHS rule changes qualify for one or more of the exemptions under RCW 34.05.328(5)(b).

When a rule meets the definition of significant legislative rule and a cost-benefit analysis is required, DSHS prepares analyses describing the anticipated costs and benefits of the rules, determines whether adopting the rules is the least burdensome alternative for those persons or entities required to comply, and completes other related documentation required by the statute or DSHS policy and practice.

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.

Although not legally required, the DSHS process also 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.

Between January 2006 through November 2009 the department completed 84 permanent rule making actions that were considered significant legislative rules requiring a cost-benefit analysis. In early December 2009, the department completed 2 additional significant legislative rule making actions that will become effective in 2010 and anticipates at least one more filing before the end of December 2009:

ADSA Home and Community Services Division	Chapter 388-71 filed as WSR 09-24-092 regarding training partnerships
HRSA Medical Assistance	WAC 388-543-2900 filed as WSR 09-24-094 regarding reimbursement methodology for Medical supplies and non-durable medical equipment
HRSA Medical Assistance	Chapter 388-543 WAC (not yet filed) regarding Enteral Nutrition

A number of administrations in DSHS report that the extra requirements related to significant legislative rule determination add a small cost related to staff time and AAG time needed for the extra analyses required for these rules. No administrations reported that these requirements adversely affected a program’s ability to fulfill the DSHS mission; there was some sense that in the future the extra time needed to fulfill the requirements could potentially lead to difficulty in meeting federal deadlines. No

administration reported any legal action based on the alleged failure of DSHS to comply with RCW 34.05.328.

Most administrations reported that the significant rule requirements did not affect the substance of the final adopted rule. The department's rule development process and efforts toward stakeholder involvement align with the requirements in RCW 34.05.328. The DSHS Aging and Disability Services Administration highlighted a few examples of the outcomes related to intentional stakeholder involvement in the development of rules.

The Division of Developmental Disabilities in the Aging and Disability Services Administration reported that their intentional stakeholder involvement in the development of rule changes increased the acceptability of their final rules in many cases. Though the intentional involvement of stakeholders in rule development aligns with the requirements outlined in RCW 34.05.328, these are best practices used by department rule makers on all types of rules. The Division of Developmental Disabilities also reported that rules in chapter 388-845 were changed under agreements with the federal Center for Medicare and Medicaid Services as well as the Service Employees International Union (SEIU). The stakeholder feedback regarding clarity of language and associated costs ensured the proposed rules were in compliance with these agreements.

The Residential Care Services Division of the DSHS Aging and Disability Services Administration reported that rules in chapter 388-76 regarding Adult Family Home Minimum Licensing Requirements in October 2007 experienced increased stakeholder participation across the state during the development of the rule, with approximately 170 people giving input. The program reports that this extensive stakeholder work on the rule drafts and anticipated costs improved the acceptability of the proposed rules. Similarly, rules adopted in chapter 388-101 regarding Certified Community Residential Services and Support in December 2007 achieved significant participation in the rule development stage. The extensive feedback on rule drafts and anticipated costs resulted in greater understanding and acceptance of the final rules by service providers.

1. General questions:

- a. What additional costs has your program experienced related with the more intensive Significant Legislative Rule-making requirements of RCW 34.05.328?

No costs were identified other than staff time and mailing costs for stakeholder outreach, and conducting cost-benefit analyses for each rule.

- b. Have the Significant Legislative Rule-making requirements adversely affected your program's ability to fulfill DSHS' mission? If so, how?

No.

2. Significant Legislative Rules adopted by the program during this period:

Chapter 388-825 WAC

Flexible Family Support Pilot Program

Adopted February 23, 2006 as WSR [06-06-040](#)

Approximate number of days to complete this rule-making: 242.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Chapter 388-828 WAC

The DDD Assessment Tool

Adopted April 23, 2007 as WSR [07-10-029](#)

Approximate number of days to complete this rule-making: 512 days.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

According to department practice, DDD engaged in extensive stakeholder work with clients, families, providers and advocacy groups, early on and throughout the process, to ensure that all stakeholder concerns were addressed before final adoption. Because of this stakeholder work, DDD was able to get critical feedback regarding the clarity of the language to ensure that the proposed rules were clear and easy to understand. This is in alignment with requirements of RCW 34.05.328 though it is usual department practice.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

The stakeholder work done by the department helped promote transparency in the development and implementation of the proposed rules, providing the general public and those affected by the rules with clear information regarding their intent and purpose.

Chapter 388-829A WAC

Alternative Living

Adopted July 31, 2007 as WSR [07-16-101](#)

Approximate number of days to complete this rule-making: 497 days.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Chapter 388-829C WAC:

Companion Home Residential Services

Adopted July 31, 2007 as WSR [07-16-102](#)

Approximate number of days to complete this rule-making: 497.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Chapter 388-845 WAC

DDD Home and Community Based Services Waivers

Adopted September 26, 2007 as WSR [07-20-050](#)

Approximate number of days to complete this rule-making: 497.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

The department's stakeholder process used for this rule change aligns with the purposes of RCW 34.05.328. Chapter 388-845 was amended under an agreement with the Center for Medicare and Medicaid Services under Section 1915 of the Social Security Act. The amendments also incorporate the provisions of the letter of agreement between the state of Washington and the Service Employees International Union (SEIU). The department requested and analyzed feedback from stakeholders regarding the clarity of the language that ensured the proposed rules were in compliance with our agreement under Boyle v. Arnold-Williams and SEIU.

Chapter 388-845 WAC

Amending the procedures for administering the Home and Community Based Services Waivers

Adopted September 22, 2008 as WSR [08-20-033](#)

Approximate number of days to complete this rule-making: 226.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

The department's stakeholder process used for this rule change aligns with the purposes of RCW 34.05.328. Comments received were from SEIU and counties responsible for providing employment services. These comments were evaluated and responded to. DDD also prepared a Small Business Economic Impact Statement as required by chapter 19.85 RCW and determined that some personal care providers may be impacted by these changes. These changes were implemented with extensive communication with SEIU represented employees that may be impacted by the rule changes. Furthermore, a cost-benefit analysis was produced taking into account both the qualitative and quantitative benefits and costs. The department considered the cost of compliance examining the impact on clients and agencies as required by the RCW. Due to the fact that some personal care service providers may receive lower reimbursement for transportation services, amendments were made to the

letter of agreement with SEIU due to the fact that the potential lower reimbursement for mileage is unavoidable. DDD's analysis revealed that there are no other additional costs imposed by the new rules. DDD gave careful consideration to the possible impact of these rules and concluded that the benefits outweigh the costs.

Chapter 388-828 WAC

Adding the residential algorithm

Adopted May 30, 2008 as WSR [08-12-037](#)

Approximate number of days to complete this rule-making: 331.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

DDD engaged in extensive stakeholder work with clients, families, providers and advocacy groups, early on and throughout the process, to ensure that all stakeholder concerns were addressed before final adoption. Because of this stakeholder work, DDD was able to get critical feedback regarding the clarity of the language to ensure that the proposed rules were clear and easy to understand. This helped promote transparency in the development and implementation of the proposed rules, providing the general public and those affected by the rules with clear information regarding their intent and purpose.

Chapter 388-825 WAC

Defining and reorganizing the rules governing the delivery of services to individuals with developmental disabilities

<p>Adopted May 19, 2008 as WSR 08-11-072 Approximate number of days to complete this rule-making: 398.</p>
<p>Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?</p> <p>No.</p>
<p>Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?</p> <p>No.</p>
<p>Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:</p> <p>No.</p>

<p>WAC 388-828-5990, 6010, 6011, 6012, 388-829C-230 Respite hours for companion homes</p> <p>Adopted September 24, 2009 as WSR 09-20-004 Approximate number of days to complete this rule-making: 105.</p>
<p>Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?</p> <p>No.</p>
<p>Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?</p> <p>No.</p>
<p>Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:</p> <p>As part of the rule-making process, DDD engaged in stakeholder involvement and prepared a cost-benefit analysis. These actions promoted a clear implementation of a fair and equitable respite assessment for clients in Companion Homes.</p>

1. General questions:

- a. What additional costs has your program experienced related with the more intensive Significant Legislative Rule-making requirements of RCW 34.05.328?**

Additional staff time is needed to complete the significant rule analysis and rule implementation plan. For DSHS rules, Assistant Attorney General (AAG) time is required to review and approve the rules.

- b. Have the Significant Legislative Rule-making requirements adversely affected your program's ability to fulfill DSHS' mission? If so, how?**

There has not been an adverse impact other than additional staff time.

2. Significant Legislative Rules adopted by the program during this period:

Chapters 388-106, 388-71, and 388-110 WAC:

Clarifying the intent of policies adopted in the new chapter 388-106 WAC

Adopted February 6, 2006 as WSR [06-05-022](#)

Approximate number of days to complete this rule-making: 185.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

Unknown

WAC 388-106-0010, -0015, -0040, -0055, and -0130.

New Freedom Consumer Directed Services

Adopted July 25, 2006 as WSR [06-16-035](#)

Approximate number of days to complete this rule-making: 520.
Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how? No
Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome? No
Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain: Unknown

<p>Adopting new WAC 388-106-0745 through 0765 and amending WAC 388-515-1505 Adding long-term care service and eligibility criteria for implementation of the long-term care portion of the Washington Medicaid integration partnership (WMIP)</p> <p>Adopted August 31, 2006 as WSR 06-18-058</p> <p>Approximate number of days to complete this rule-making: 540.</p>
Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how? No
Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome? No
Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain: Unknown

<p>Chapter 388-71 and 388-112 WAC Nurse delegation training, HIV/AIDS training, and CPR training</p>
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Adopted January 14, 2009 as WSR [09-03-066](#)

Approximate number of days to complete this rule-making: 172.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

Unknown

1. General questions:

a. What additional costs has your program experienced related with the more intensive Significant Legislative Rule-making requirements of RCW 34.05.328?

Most, if not all, of the rules Residential Care Services adopt, amend or repeal are considered significant legislative rules. The rule making steps and costs to complete the steps are the same regardless of whether the rules are significant or not.

b. Have the Significant Legislative Rule-making requirements adversely affected your program's ability to fulfill DSHS' mission? If so, how?

The significant legislative rule making requirements have not adversely affect Resident Care Services' ability to fulfill DSHS' mission.

2. Significant Legislative Rules adopted by the program during this period:

<p>Chapter 388-76 WAC Adult Family Home minimum licensing requirements.</p> <p>Adopted October 16, 2007 as WSR 07-21-080</p> <p>Approximate number of days to complete this rule-making: 538.</p>
<p>Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?</p> <p>No</p>
<p>Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?</p> <p>No</p>
<p>Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:</p> <p>There was increased participation in the development of these rules with multiple internal and external stakeholder meetings held throughout the state. Approximately 170 different people gave input. The extensive stakeholder feedback on rule drafts and anticipated costs improved the acceptability of the formally proposed rules.</p>

Chapter 388-101 WAC

Certified Community Residential Services and Support

Adopted December 21, 2007 as WSR [08-02-022](#)

Approximate number of days to complete this rule-making: 989.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

Since this was amending a complete chapter, there was significant participation in the development of these rules. The timeframe allowed for extensive stakeholder feedback on rule drafts and anticipated costs that resulted in greater understanding and acceptance of the final rules by service providers.

Chapter 388-78A WAC

Plans of Correction

Adopted December 15, 2008 as WSR [09-01-079](#)

Approximate number of days to complete this rule-making: 220.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No

Chapter 388-78A WAC

Boarding Home licensing

Adopted December 10, 2008 as WSR [09-01-052](#)

Approximate number of days to complete this rule-making: 381.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No

Chapter 388-97 WAC

Renumbering and clarifying Nursing Homes rules

Adopted September 24, 2008 as WSR [08-20-062](#)

Approximate number of days to complete this rule-making: 432.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No

Chapter 388-78A WAC

Due process rights for persons alleged to have been abandoned, abused, neglected, exploited, or financially exploited boarding home residents/resident protection program (RPP).

Adopted February 15, 2009 as WSR [08-05-099](#)

Approximate number of days to complete this rule-making: 213.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No

Chapter 388-76 WAC

Due process rights for persons alleged to have abandoned, abused, neglected, exploited or financially exploited adult family home residents/resident protection program (RPP)

Adopted February 15, 2008 as WSR [08-05-098](#)

Approximate number of days to complete this rule-making: 213

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No

WAC 388-76-10120, 10125, 10955, and 10960

Clarifying requirements and making grammatical corrections to Adult Family Home rules

Adopted January 12, 2009 as WSR [09-03-028](#)

Approximate number of days to complete this rule-making: 156.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No

Chapter 388-76 WAC

Clarifying requirements and making grammatical corrections to Adult Family Home rules

Adopted January 12, 2009 as WSR [09-03-029](#)

Approximate number of days to complete this rule-making: 336

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No

Chapter 388-76 WAC:

Clarifying requirements and making grammatical correction in Adult Family Home rules.

<p>Adopted January 12, 2009 as WSR 09-03-030</p> <p>Approximate number of days to complete this rule-making: 156.</p>
<p>Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?</p> <p>No</p>
<p>Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?</p> <p>No</p>
<p>Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:</p> <p>No</p>

<p>Chapter 388-78A WAC Boarding Home Change of Ownership (CHOW)</p> <p>Adopted March 2, 2009 as WSR 09-06-063</p> <p>Approximate number of days to complete this rule-making: 138.</p>
<p>Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?</p> <p>No</p>
<p>Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?</p> <p>No</p>
<p>Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:</p> <p>No</p>

<p>WAC 388-110-140 Adding kitchen sink requirements for assisted living resident units in boarding homes</p>

Adopted September 10, 2009 as WSR [09-19-042](#)

Approximate number of days to complete this rule-making: 395.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No

1. General questions:

- a. What additional costs has your program experienced related with the more intensive Significant Legislative Rule-making requirements of RCW 34.05.328?
None
- b. Have the Significant Legislative Rule-making requirements adversely affected your program's ability to fulfill DSHS' mission? If so, how?
No

2. Significant Legislative Rules adopted by the program during this period:

<p>WAC 388-148-0010 and 0120 Regarding runaway children</p> <p>Adopted October 25, 2006 as WSR 06-22-030</p> <p>Approximate number of days to complete this rule-making: 178.</p>
<p>Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?</p> <p>No</p>
<p>Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?</p> <p>None</p>
<p>Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:</p> <p>No</p>

<p>Chapter 388-61A WAC Domestic Violence Shelter Programs</p> <p>Adopted February 6, 2007 as WSR 07-04-098</p> <p>Approximate number of days to complete this rule-making: 1171.</p>

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

None

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

The requirement of doing a cost-benefit analysis, while somewhat cumbersome, had the effect of more carefully and critically analyzing the costs and benefits associated with the proposed rules. Those affected by the proposed rules had a clear avenue to articulate in a methodical way, how each proposed change would or would not affect their business. This provided greater detailed information to DSHS/CA in analyzing whether the costs of the proposed rule outweighed the benefits of moving forward with implementation. In this case, the costs were minimal and the benefits far outweighed the monetary/staff impact of the proposed rules

1. General questions:

- a. What additional costs has your program experienced related with the more intensive Significant Legislative Rule-making requirements of RCW 34.05.328?

There were no additional costs identified.

- b. Have the Significant Legislative Rule-making requirements adversely affected your program's ability to fulfill DSHS' mission? If so, how?

There were no adverse effects identified. However, in future these extra requirements may negatively impact this Division's rule-making if it takes longer for the Division to comply with changes in federal regulation.

2. Significant Legislative Rules adopted by the program during this period:

<p>Chapter 388-890 and 388-891 WAC Division of Vocational Rehabilitation rules</p> <p>Adopted June 15, 2007 as WSR 07-10-023</p> <p>Approximate number of days to complete this rule-making: 214.</p>
<p>Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?</p> <p>No.</p>
<p>Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?</p> <p>No.</p>
<p>Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:</p> <p>No.</p>

1. General questions:

- a. What additional costs has your program experienced related with the more intensive Significant Legislative Rule-making requirements of RCW 34.05.328?**

The Division of Behavioral Health and Recovery (DBHR) has not experienced additional costs.

- b. Have the Significant Legislative Rule-making requirements adversely affected your program's ability to fulfill DSHS' mission? If so, how?**

DBHR has not experienced any adverse affects due to the Significant Legislative Rule-making requirements.

2. Significant Legislative Rules adopted by the program during this period:

Chapter 388-805 WAC

Establishing the level of quality and patient care standards for chemical dependency service providers seeking certification by DSHS

Adopted May 17, 2006 as WSR [06-11-096](#)

Approximate number of days to complete this rule-making: 263.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

None

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No

1. General questions:

- a. What additional costs has your program experienced related with the more intensive Significant Legislative Rule-making requirements of RCW 34.05.328?**

Indirect costs, such as staff salaries, related to the time spent researching and collecting data for cost-benefit analyses and completing the additional significant rule analysis and rule implementation plan (DSHS forms) required for rule making.

- b. Have the Significant Legislative Rule-making requirements adversely affected your program's ability to fulfill DSHS' mission? If so, how?**

No.

2. Significant Legislative Rules adopted by the program during this period:

Chapter 388-538 WAC

Managed Care rules

Adopted January 12, 2006 as WSR [06-03-081](#)

Approximate number of days to complete this rule-making: 341.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-550-2598

Department-weighted cost-to-charges rates

Adopted January 31, 2006 as WSR [06-04-089](#)

Approximate number of days to complete this rule-making: 117.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Repealing WAC 388-550-6800 and amending WAC 388-550-3300, 4300, 4600, 4650, 4900, 5000, 5150, 5200, 5210, 5220, 5400, and 5450

Certified Public Expenditure program

Adopted March 30, 2006 as WSR [06-08-046](#)

Approximate number of days to complete this rule-making: 221.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-550-4570 and 4690

Adding a “hold harmless” provision and describing requirements for Certified Public Expenditure payments.

Adopted May 17, 2006 as WSR [06-11-100](#)

Approximate number of days to complete this rule-making: 268

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-501-0135

Restricting a fee-for-service client or Managed Care Organization enrollee to one narcotic prescriber

Adopted June 30, 2006 as WSR [06-14-062](#)

Approximate number of days to complete this rule-making: 479

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Repealing WAC 388-527-2792 and 2795 and amending WAC 388-527-2700, 388-527-2730, 388-527-2737, 388-527-2742, 388-527-2750, and 388-527-2790.

Adopted August 14, 2006 as WSR [06-17-075](#)

Approximate number of days to complete this rule-making: 324

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Various rules in Title 388 WAC

Making Health and Recovery Services Administration coverage rules clearer, more transparent, and consistent.

Adopted November 30, 2006 as WSR [06-24-036](#)

Approximate number of days to complete this rule-making: 461

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-501-0070 and 388-543-1300

Client's right to a fair hearing

Adopted January 29, 2007 as WSR [07-04-036](#)

Approximate number of days to complete this rule-making: 520

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Repealing WAC 388-535-1200, 1230, and 1240 and amending WAC 388-535-1080, 1100, 1220, and 1245

Clarifying policy for dental-related services for clients through age 20.

Adopted March 1, 2007 as WSR [07-06-042](#)

Approximate number of days to complete this rule-making: 135

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Repealing WAC 388-535-1270 and 1290; and amending WAC 388-535-1050, 1065, 1255, and 1280

Clarifying policies for dental-related services for clients age 21 and older

Adopted March 1, 2007 as WSR [07-06-041](#)

Approximate number of days to complete this rule-making: 493.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-550-2650

Adopting two separate base community psychiatric hospital payments

Adopted March 1, 2007 as WSR [07-06-043](#)

Approximate number of days to complete this rule-making: 596

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Repealing WAC 388-502-0240 and adopting new chapter 388-502A WAC

Provider audits and appeals

Adopted April 23, 2007 as WSR [07-10-022](#)

Approximate number of days to complete this rule-making: 211

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-550-2501, 2511, 2521, 2531, 2541, and 2561

Acute Physical Medical and Rehabilitation program

Adopted May 30, 2007 as WSR [07-12-039](#)

Approximate number of days to complete this rule-making: 213

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-550-4600 and 4700

Ending the hospital selective contracting program

Adopted May 30, 2007 as WSR [07-12-040](#)

Approximate number of days to complete this rule-making: 641

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Chapter 388-550 WAC

Results of the Navigant Study – updating hospital services coverage

Adopted June 28, 2007 as WSR [07-14-051](#)

Approximate number of days to complete this rule-making: 241

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-550-2598

Critical Access Hospitals

Adopted June 28, 2007 as WSR [07-14-054](#)

Approximate number of days to complete this rule-making: 241

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-550-1100, 2600, 2650

Inpatient psychiatric services coverage

Adopted June 28, 2007 as WSR [07-14-053](#)

Approximate number of days to complete this rule-making: 669

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-550-1050

Definitions for inpatient and outpatient hospital services

Adopted August 7, 2007 as WSR [07-14-052](#)

Approximate number of days to complete this rule-making: 241

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Repealing WAC 388-550-2000; and amending WAC 388-550-2900, 3000, 3200, 3300, 3350, 3381, 3400, and 3500

Hospital payment methodologies

Adopted June 28, 2007 as WSR [07-14-055](#)

Approximate number of days to complete this rule-making: 241

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-550-4925, 4935, 4670, 4900, 5000, 5125, 5130, 5150, 5200, 5210, 5220, 5400, 5410, 5425, and 5450

Disproportionate Share Hospital programs

Adopted June 29, 2007 as WSR [07-14-090](#)

Approximate number of days to complete this rule-making: 242

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs

of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-543-1100, 1150, 1600, 1700, 2000, and 2800

Durable Medical Equipment

Adopted August 13, 2007 as WSR [07-17-062](#)

Approximate number of days to complete this rule-making: 216

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Chapter 388-530 WAC

Pharmacy services chapter reorganization

Adopted September 26, 2007 as WSR [07-20-049](#)

Approximate number of days to complete this rule-making: 241

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-557-0050, 0100, 0200, 0300, 0400

Chronic Care Management

Adopted September 26, 2007 as WSR [07-20-048](#)

Approximate number of days to complete this rule-making: 275

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Subject Matter:

Subrogation

Adopted December 12, 2007 as WSR [08-01-041](#) and [07-23-080](#)

Approximate number of days to complete this rule-making: 317
Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how? No.
Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome? No.
Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain: No.

<p>Chapter 388-550 WAC Long Term Acute Care</p> <p>Adopted October 8, 2009 as WSR 08-21-039</p> <p>Approximate number of days to complete this rule-making: 428</p>
Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how? No.
Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome? No.
Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain: No.

<p>WAC 388-550-4670, 4690, and 5410 Hold harmless grant payment amounts for Certified Public Expenditure payments</p>
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Adopted September 22, 2008 as WSR [08-20-032](#)

Approximate number of days to complete this rule-making: 122

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-531-1000

Physician trauma services

Adopted August 27, 2008 as WSR [08-18-029](#)

Approximate number of days to complete this rule-making: 250

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-501-0100

Giving notice to the department and determining reimbursement of medicaid money paid to an injured client

Adopted August 14, 2008 as WSR [08-17-046](#)

Approximate number of days to complete this rule-making: 210

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-535A-0010, 0020, 0030, 0040, 0050, and 0060

Orthodontic services

Adopted August 7, 2008as WSR [08-17-009](#)

Approximate number of days to complete this rule-making: 299

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-535-1245

Access to Baby and Child Dentistry (ABCD) program

Adopted July 24, 2008 as WSR [08-16-009](#)

Approximate number of days to complete this rule-making: 354

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Chapter 388-538 WAC

Patient Review and Coordination program

Adopted July 18, 2008 as WSR [08-15-110](#)

Approximate number of days to complete this rule-making: 211

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs

of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Repealing WAC 388-544-0450; and amending WAC 388-544-0010, 0050, 0100, 0150, 0250, 0300, 0350, 0400, 0500, 0550, and 0600

Noncovered services, eyeglasses, and contact lenses

Adopted June 24, 2008 as WSR [08-14-052](#)

Approximate number of days to complete this rule-making: 412

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-502-0270

Disputes reviewed by the DSHS HRSA Deputy Assistant Secretary

Adopted May 27, 2008 as WSR [08-12-012](#)

Approximate number of days to complete this rule-making: 131

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Chapter 388-532 WAC

TAKE CHARGE program

Adopted May 13, 2008 as WSR [08-11-031](#)

Approximate number of days to complete this rule-making: 552

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-550-5450

Supplemental distributions to hospitals

Adopted March 31, 2008 as WSR [08-08-065](#)

Approximate number of days to complete this rule-making: 240
Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how? No.
Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome? No.
Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain: No.

<p>New WAC 388-501-0182 and 0184 and amending WAC 388-501-0180, 388-502-0120, 388-535-1550, 388-546-0800, 0900, and 5100</p> <p>Out of state and out of country medical care</p> <p>Adopted March 31, 2008 as WSR 08-08-064</p> <p>Approximate number of days to complete this rule-making: 475</p>
Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how? No.
Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome? No.
Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain: No.

<p>Chapter 688-549 WAC</p> <p>Rural Health Clinics</p>

Adopted February 7, 2008 as WSR [08-05-011](#)

Approximate number of days to complete this rule-making: 906

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-501-0135

Patient Review and Coordination program

Adopted February 7, 2008 as WSR [08-05-010](#)

Approximate number of days to complete this rule-making: 118

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-530-1000, 2000, and 2100

Non coverage of over-the-counter drugs, vitamins, and minerals

Adopted February 5, 2009 as WSR [09-05-007](#)

Approximate number of days to complete this rule-making: 268

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-543-1200

Durable Medical Equipment providers

Adopted February 5, 2009 as WSR [09-05-008](#)

Approximate number of days to complete this rule-making: 97

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-537-0100, 0200, 0300, 0350, 0400, 0500, 0600, 0700, and 0800

School-based healthcare services

Adopted March 4, 2009 as WSR [09-07-004](#)

Approximate number of days to complete this rule-making: March 4, 2009

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-527-2730, 2737, 2750, and 2820

Recognizing state registered domestic partners

Adopted March 10, 2009 as WSR [09-07-038](#)

Approximate number of days to complete this rule-making: 139

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs

of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-544-1010, 1100, 1200, 1300, 1400

Hearing aids and services

Adopted May 27, 2009 as WSR [09-12-034](#)

Approximate number of days to complete this rule-making: 828

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Amending WAC 388-550-3600, 3700, 4500, 7050, 7100, 7500 and 7600; and new sections WAC 388-550-4550 7450

Outpatient Prospective Payment System payments

Adopted May 28, 2009 as WSR [09-12-062](#)

Approximate number of days to complete this rule-making: 116

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-502-0150, 388-550-2800, 388-550-3000, 388-550-3010, 388-550-3020, 388-550-3460, 388-550-3900, and 388-550-4000

Hospital rates

Adopted May 28, 2009 as WSR [09-12-063](#)

Approximate number of days to complete this rule-making: 116

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-501-0055

Health Technology Assessments

Adopted August 6, 2009as WSR [09-17-004](#)

Approximate number of days to complete this rule-making: 782
Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how? No.
Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome? No.
Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain: No.

<p>WAC 388-530-2000 and 2100 Pharmaceutical reductions</p> <p>Adopted October 22, 2009 as WSR 09-22-005</p> <p>Approximate number of days to complete this rule-making: 189</p>
Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how? No.
Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome? No.
Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain: No.

<p>Repealing WAC 388-543-2300 and amending WAC 388-543-1150, 1300, and 1600 Durable medical equipment reductions</p>

Adopted October 28, 2009 as WSR [09-22-047](#)

Approximate number of days to complete this rule-making: 256

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

1. General questions:

- a. What additional costs has your program experienced related with the more intensive Significant Legislative Rule-making requirements of RCW 34.05.328?**

Indirect costs, such as staff salaries, related to the time spent researching and collecting data for cost-benefit analyses and completing the additional significant rule analysis and rule implementation plan (DSHS forms) required for rule making.

- b. Have the Significant Legislative Rule-making requirements adversely affected your program's ability to fulfill DSHS' mission? If so, how?**

No.

2. Significant Legislative Rules adopted by the Program during this period:

WAC 388-865-0105, 388-865-0150, 388-865-0205, 388-865-0245, 388-865-0275, 388-865-0430, 388-865-0440, 388-865-0452, 388-865-0466, 388-865-0468, and 388-865-0575

Removing the word "county" from the term, "county designated mental health professionals"

Adopted August 18, 2006 as WSR [06-17-114](#)

Approximate number of days to complete this rule-making: 147.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

Repealing WAC 388-865-0201 and 0203

Repealing two WAC sections to be consistent with changes made to Chapter 71.24 RCW.

Adopted August 31, 2006 as WSR [06-18-057](#)

Approximate number of days to complete this rule-making: 160.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-865-0420

Expanding the options for intake evaluation to allow for an abbreviated process when the individual is expected to need short-term mental health services or had full evaluation previously and is resuming services

Adopted March 2, 2007 as WSR [07-06-050](#)

Approximate number of days to complete this rule-making: 341.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

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WAC 388-865-0105, 0410, 0484, 0511, and 0526 Allowing a community mental health agency (CMHA) to contract directly with MHD on a fee-for-service basis when the local RSN chooses not to administer mental health services for the state. Adopted December 30, 2008 as WSR 09-02-030 Approximate number of days to complete this rule-making: 372.
Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how? No.
Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome? No.
Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain: No.

WAC 388-865-0700, 0705, 0710, 0715, 0720, and 0725 Certifying clubhouses that meet minimum standards Adopted June 26, 2008 as WSR 08-14-080 Approximate number of days to complete this rule-making: 305.
Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how? No.
Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome? No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

WAC 388-865-0750, 0755, 0760, 0765, 0770, 0775, 0780, and 0785

Clarifying crisis stabilization units that meet minimum standards

Adopted June 26, 2008 as WSR [08-14-079](#)

Approximate number of days to complete this rule-making: 250.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

No.

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No.

1. General questions:

a. What additional costs has your program experienced related with the more intensive Significant Legislative Rule-making requirements of RCW 34.05.328?

Due to the particular nature of the single rule adopted by JRA in this period, the new statutory provisions had only a small effect.

Additional costs are indeterminate, but small. Increased complexity in the rule-making process required little additional staff time.

b. Have the Significant Legislative Rule-making requirements adversely affected your program's ability to fulfill DSHS' mission? If so, how?

No. A delay in adoption was unrelated to changes in statute.

2. Significant Legislative Rules adopted by the program during this period:

WAC 388-740-0010, 0040, and 0070:

Defining behavior which may be cause for the Secretary to modify parole and return a juvenile sex offender to confinement for up to 24 weeks.

Adopted October 8, 2009 as WSR [08-21-038](#)

Approximate number of days to complete this rule-making: 428.

Did the Significant Legislative Rule Requirements of RCW 34.05.328 affect the substance of your final adopted rule? If so, how?

No effect on substance.

Were there any legal actions related to failure to comply with RCW 34.05.328? If so, what were the costs of the legal actions, and what was the outcome?

None

Were there ways that the Significant Legislative Rule requirements improved the acceptability of this rule-making project to those who are regulated by the rules? If so, explain:

No known difference

EMPLOYMENT SECURITY DEPARTMENT SIGNIFICANT LEGISLATIVE RULES REPORT

1. Significant legislative rules adopted since January 1, 2006

• November 20, 2007

Chapter 192-350, Transfer of Business

Adopted 11 rules; repealed 4 rules

The rules implemented state legislation passed in 2007 and the SUTA-Dumping Act of 2004 passed by Congress. The rules clarify business transfer requirements for both predecessor and successor employers. The goal is to reduce or eliminate the practice of SUTA-dumping, where employers attempt to unlawfully avoid the payment of state unemployment taxes.

• November 20, 2007

WAC 192-100-050, Fraud defined

Chapter 192-220, Overpayment Notice, Assessment and Fraud

Chapter 192-230, Recovery of Overpayments

Adopted 7 rules, repealed 6 rules

The rules implemented 2007 legislation that imposes increasing disqualification periods and monetary penalties for individuals who commit fraud more than once. In addition, the rules clarify how the penalties will be calculated, notice provided to the claimant and interested employer, and repayment requirements. The rules also clarify that overpayments resulting from the employer's failure to correctly report wages and hours will not be charged to the claimant.

• November 20, 2007

Chapter 192-300, Registering for Unemployment Insurance Taxes

Adopted 4 rules; amended 1 rule

The rules implemented 2007 legislation requiring that professional employer organizations (PEOs) register with the department for unemployment insurance tax purposes, ensure their client employers are registered, file tax reports and payments on behalf of their client employers, and maintain records that are available to the department for review. Penalties are established for PEOs that do not comply with the registration requirements.

• November 20, 2007

WAC 192-180-060, How will the department identify individuals who are likely to exhaust benefits?

Chapter 192-200, School or Training

Adopted 6 rules, amended 4 rules, repealed 1 rule

The rules implemented 2007 legislation authorizing the department to pay benefits to unemployment insurance claimants who are participating in approved entrepreneurial training with the goal of becoming self-employed. The rules also describe the model the department will use to identify claimants who are most likely to exhaust benefits.

EMPLOYMENT SECURITY DEPARTMENT SIGNIFICANT LEGISLATIVE RULES REPORT

• **November 20, 2007**

WAC 192-100-500, General definitions—Relating to wages and taxes.

WAC 192-140-220, What happens if I do not respond to a request for information about my corporate officer status?

Chapter 192-300, Registering for Unemployment Insurance Taxes.

Chapter 192-310, Reporting of Wages and Taxes Due.

Chapter 192-320, Experience Rating and Benefit Charging.

WAC 192-330-300, Adjustments and refunds—Reduction of refund if wages reported in error—RCW 50.24.150.

WAC 192-340-010, Field audit expansion.

WAC 192-340-020, How may auditors determine payroll and wage information which the employer fails to provide?

Adopted 17 rules, amended 12 rules

The rules implemented 2007 legislation concerning tax rates for new employers, reporting requirements, penalties, corporate officers, exempting payments by certain small performing arts industries, requiring notification by religious organizations to their employees, and required employer notices. The filing also included new and amended rules that clarify existing policy or convert policy to rules.

• **October 6, 2008**

Chapter 192-220, Overpayment Notice, Assessment and Fraud

Chapter 192-230, Recovery of Overpayments

Adopted 5 rules, amended 4 rules

The rules modify the policies and procedures used by the department in the collection of overpaid unemployment benefits, particularly the circumstances under which a waiver of the overpayment may be granted or an offer in compromise accepted based on principles of equity and good conscience. The rules comply with the Court of Appeals decision in the case of Delagrave v. ESD, 127 Wn.App.596.

• **November 16, 2009**

WAC 192-320-035 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports?

Amended 1 rule

The rule implemented HB 1338 (Ch. 83, Laws of 2009). The new law broadens the ability of the Commissioner to waive application of the higher tax rate for delinquent employers if the employer acted in good faith and application of the higher tax rate would be inequitable. The rule provides standards for the Commissioner to apply in determining whether to waive the higher tax rate for delinquent employers.

The above rules were developed through consultation with affected and interested stakeholders. Rules were revised where necessary to address stakeholder comments.

EMPLOYMENT SECURITY DEPARTMENT SIGNIFICANT LEGISLATIVE RULES REPORT

2. Summary of Additional Costs

Stakeholder interest in Employment Security Department rule-making remains high. Rule-making is an interactive process between the department and stakeholders. We conservatively estimated that it takes an average of 30 additional staff hours to complete the more intensive rule-making requirements imposed for significant legislative rules. The department's ongoing efforts to involve stakeholders in the rule-making process to an ever increasing extent, while resulting in better rules overall, does increase the department's administrative costs.

3. Legal actions for failure to comply with RCW 34.05.328

None.

4. Adverse effects

No adverse affect on the capacity to fulfill the Departments legislatively prescribed mission.

5. Rule acceptability

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

6. Stakeholder comments

Stakeholders continue to comment positively on the inclusiveness of the department's stakeholder input process. The Unemployment Insurance Advisory Committee consisting of individuals representing both business and labor have asked for and received updates at each quarterly meeting on the department's rulemaking activities and progress on regulatory improvement. The members of this committee have expressed appreciation for the department's efforts to keep them informed and to solicit their input on every substantive rule-making action. Several members have attended meetings and hearings on rules in which they have a specific interest, and have been an invaluable resource for the department.

December 10, 2009

MEMORANDUM

TO: Faith Lumsden, Director of the Governor's Regulatory Assistance

FROM: Peter Goldmark, Chair



SUBJECT: Significant Rulemaking Report for 2006-2009

The following summary is provided for the 2010 Significant Rulemaking Report as described in RCW 34.05.328.

a. A list of the rules.

Small Forest Landowner Road Maintenance and Abandonment Plans (RMAPs) –

- Defines certain terms as they pertain to small forest landowner RMAPs.
- Alters planning requirements for SFLOs including the creation of a simplified planning checklist.
- Exempts SFLO's checklist plans from continuing obligation requirements upon transfer of title.
- Establishes a cost-share program to provide financial assistance for removal of fish blockages.

Northern Spotted Owl

- On lands within a SOSEA, removes the ability of a landowner to count an adjacent landowner's habitat under an HCP, LOP or other approved plan.
- In the definition of "Northern spotted owl site center", places a moratorium on the practice of "decertifying" Status 1, 2, and 3 spotted owl sites. This moratorium is in place until June 30, 2007 until a spotted owl recovery plan is completed.

Perennial Initiation Points

- Under the adaptive management process, a scientific study was completed by the Cooperative Monitoring, Evaluation, and Research (CMER) Committee, *Type N Stream Demarcation Study, Phase I: Pilot Results*. It indicated that the default basin sizes available for use in determining stream perennial initiation points are incorrect.

Small Forest Landowner Long Term Applications

- Small forest landowners may propose forest practices applications in a new two step process. Approvals may be for up to 15 years at the landowner's discretion.

Northern Spotted Owl

- In the definition of “Northern spotted owl site center”, extended a moratorium on the practice of “decertifying” Status 1, 2, and 3 spotted owl sites. This moratorium is in place until December 31, 2008.

Historic Sites and Conversion Activities

- Clarifies rules that classify forest practices involving historic sites and cultural resources.
- Defines “conversion activities” in support of implementing SSSB 5883, 2007 legislation.

Desired Future Conditions

- Under the adaptive management process, a scientific study was completed by the Cooperative Monitoring, Evaluation, and Research (CMER) Committee, *Validation of the Western Washington Riparian Desired Future Condition (DFC) Performance Targets in the Washington State Forest Practices Rules with Data from Mature, Unmanaged, Conifer-Dominated Riparian Stands*. The study results indicated that the basal areas in mature unmanaged conifer-dominated riparian stands are significantly different (higher) than the basal area targets adopted in the 2001 rules.

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

b. A summary of costs incurred.

Any additional costs were associated with staff time in planning and implementing the requirements under RCW 34.05.328.

c. Description of any legal actions.

No legal actions have been initiated.

d. 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.

e. Rule acceptability.

No measurable change for the adopted rule has 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.

f. 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

2009

Executive Summary

The Office of the Insurance Commissioner submits this report to assist the Office of Regulatory Affairs in preparing the 2010 report required by RCW 34.05.328(6). We submitted our last report in 2004. We have adopted 17 rules between January 1, 2005 and December 10, 2009 that we determined are “significant legislative rules.” The significant legislative rule requirements add approximately \$235,000 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 adopted, the proposed rules deemed significant legislative rules.

R number	Name of Rule	New	Amended	Repealed
R 2002-02	Credit Life, Credit Accident and Health Insurance	17		7
R 2004-05	WAC 284-43 Subchapter I - Health Plan Rates		10	2
R 2004-08	Medicare Supplement Insurance	1	21	1
R 2005-03	Exempt certain commercial property and casualty forms from filing requirements	1		1
R 2005-02	Property and Casualty Statistical Plans	17		1
R 2005-04	Contracts between carriers and providers	2		
R 2006-10	Actuarial Opinion and memorandum	6		2
R 2007-11	Rate & Form Filings (SERFF)	50	12	20

Author: Meg L. Jones
Office of the Insurance Commissioner



Office of the Insurance Commissioner Significant Legislative Rules Report

2009

R number	Name of Rule	New	Amended	Repealed
R 2007-09	Sale of Juvenile Life Insurance Policies	3		
R 2008-21	Referral of Title Insurance Business	14		1
R 2008-27	Chemical Dependency Benefits		2	
R 2007-08	Claim Settlement Practices	4	10	17
R 2008-20	Coordination of Benefits		4	
R 2008-25	Discretionary Clauses	4		
R 2008-22	Reporting of Affiliated Business Ownership of Title Insurance Agents	7		
R 2009-10	Health Care Discount Plan Organizations	6		
R 2008-15	Administrative Supervision of Insurer	6		
R 2009-11	Reinsurance-Intermediary Broker and Manager Licensing and Reporting	3	4	

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.

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 \$200,000 annually

Mailing costs¹:

Approximately \$15,000 annually

¹ Assumes \$5,000 copying/mailling costs for each significant legislative rule, and an average of 3 per year.

Author: Meg L. Jones
Office of the Insurance Commissioner



Office of the Insurance Commissioner Significant Legislative Rules Report

2009

List serve and website

maintenance: .4 FTE

Approximately \$20,000 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.

Mailing costs increased after the adoption of RCW 34.05.328. We reduced costs beginning in 2008 by:

- No longer mailing the entire filing
- Sending notices on post cards, instead of using paper and envelopes
- Encouraging electronic distribution through our list-serve and use of the internet to access proposed rule filings.

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:* The staff working on rules spend approximately 25% more time developing rules in order to comply with RCW 34.05.328. While the analysis called for by the statute are common to good rule and policy analysis, and normally are part of any rule development, the statute's documentation and communication requirements require additional time.

Because the statute provides 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

Author: Meg L. Jones
Office of the Insurance Commissioner



34.05.328, the agency must use emergency rules followed by permanent rule making to quickly address or respond to an issue. 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 in areas where there is agreement on the rule from all parties, the processes take significantly longer to complete.

3. *Limits on Number of Rules under Development* We limit our analysts to no more than five active rules at a time, 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 because the regulated industry regularly experiences multiple changes that require amendments to existing rules. During the last four years, the Commissioner prioritized 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; the attitude and approach taken by the agency has done so.

Our assessment is that those regulated understand the need for rules to explain procedures, implement programs, and align state practices with federal requirements. The majority of our rule making hearings are unattended. The Commissioner interprets this as a positive measure of how effective our stakeholder efforts are while the rule is developed. Our compliance with RCW 34.05.328 is unrelated to this outcome.

The Administrative Procedures Act cost benefit analysis requirements, and the requirements related to Small Business Economic Impact Statements (SBEIS) confuse those we regulate. Confusion does not support improved acceptance of a process or its outcome.



Other Relevant Information

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

However, performing cost benefit analysis that meets the generally accepted economic analysis standards as set out in the statute requires access to an economist. Our rule making volume is high enough to justify having an economist 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 right 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

Faith Lumsden

Governor's Office of Regulatory Assistance

P.O. Box 43113

Olympia, WA 98504-3113

Phone: 360-902-9823

E-mail: Faith.Lumsden@gov.wa.gov

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