



Rules Review Report

(SSB 5679)

2014 Report to the Legislature

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Executive Summary

In 2013, the Legislature adopted Substitute Senate Bill 5679¹ relating to improving the business climate and stimulating job creation by requiring certain agencies to establish a formal review process of existing rules. The law requires, in part, that the Departments of Labor & Industries, Health and Ecology provide this report by January 2014.

SSB 5679 directs the three agencies to establish and perform, within existing funds, a formal rules review process of its existing rules every five years. The goal of the review is to decrease the numbers of, simplify the process, and decrease the time required for obtaining licenses, permits, and inspections. The three agencies are required to adopt benchmarks to assess the effectiveness of streamlining efforts and establish a process for effectively applying sunset provisions to rules when applicable. By January 2014, the three agencies must report on their rules review processes and benchmarks.

Following the passage of SSB 5679, the three agencies formed an interagency workgroup, including the Governor's Office, and met regularly to discuss the best manner in which to meet the legislative intent. This is a joint report of all three agencies. This report includes existing as well as newly-developed rules review processes of each of the three agencies.

Each of the three agencies remains committed to implementing a formal rules review process as required by SSB 5679.

¹ Chapter 30, 2013 Laws 2nd Special Session
2014 Report to the Legislature

Department of Labor and Industries Rules Review Process and Benchmarks

The mission of the Department of Labor & Industries (L&I) is to keep Washington safe and working. One of the agency's strategic goals is to make it easy to do business with L&I. A rules review process is an important component of this goal.

L&I administers a total of 93 chapters² with just under 7,000 rules. Within the department, there are five divisions that engage in rulemaking: Fraud Prevention and Labor Standards, Field Services and Public Safety, Financial Management, Insurance Services, and Occupational Safety and Health. The agency conducts rulemaking activities throughout the year. Using listserv communication, committees (ad hoc and standing) and technical workgroups, L&I routinely informs and engages with the public during rulemaking.

Following the 2012 performance audit conducted by the State Auditor's Office, L&I initiated steps to streamline and measure the results of streamlining activities. Further, in response to Substitute Senate Bill 5679, L&I has centralized its rules review process and developed consistent agency-wide benchmarks, both of which are described in more detail in this report.

Rules review process

- L&I has created an agency-wide approach for reviewing the department's 7,000 rules. The department has developed an agency-wide rules review criteria as well as a centralized tracking system for all agency rules.

- L&I has a designated Rules Coordinator for the agency who is responsible for managing the rules review process, as well as a coordinator for each division that does rulemaking. The coordinators meet regularly regarding the agency's rules review and rulemaking processes.

² Title 296 WAC

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- The rules review process for the agency is as follows:

Step 1: Identify rules

Each division identifies rules as follows:

- Rules that are already under review as part of planned rulemaking.
- Rules that the agency is required to adopt, amend or repeal by law.
- All other rules.

For all rules identified, each division:

- Establishes estimated start and end dates of review.
- Prioritizes review of rules that address licenses, permits and inspections.

Step 2: Review rules

Each division reviews rules according to the following criteria for need, clarity and consistency:

Need

- Is the rule necessary to comply with the statutes that authorize it?
- Is the rule obsolete, duplicative, or ambiguous to a degree that warrants repeal or revision?

Clarity

- Is the rule written and organized in a clear and concise manner so that it can be readily understood by those to whom it applies?

Consistency

- Is the rule consistent with the legislative intent of the statutes that authorize it?
- Is the rule based upon sufficient statutory authority?
- Have laws or other circumstances changed so that the rule should be amended or repealed?

Step 3: Complete the Rules Review Summary Sheet

Staff completes the Rules Review Summary Sheet, which contains the rule review criteria. A centralized, agency-wide tracking system ensures that every rule is reviewed.

L&I will complete a review of all 7,000 rules by September 2018.

Benchmarks

L&I has established the following benchmarks:

- The number of rules amended or repealed to streamline the process for licenses, permits and inspections.
- The percentage of rules reviewed each year.
- The number of rules repealed or revised each year.
- Feedback from ongoing customer surveys.
- Timeliness of current licensing, permits and inspections.

Conclusion

L&I remains committed to making it easy to do business with the agency, including having a consistent, agency-wide approach to reviewing rules.

Department of Health Rules Review Process and Benchmarks

The Department of Health (DOH) established a formal review process to review all rules within Title 246 of the Washington Administrative Code (WAC) at regular intervals. The review process includes the adoption of a policy and procedure for implementation, and an electronic tracking system.

The goals of the review are based on two things:

- 1) The goals within Substitute Senate Bill 5679 (Chapter 30, 2013 Laws 2nd Special Session) which are to decrease the numbers of, simplify the process, and decrease the time required for obtaining licenses, permits, and inspections, as applicable, in order to reduce the regulatory burden on businesses without compromising public health and safety; and
- 2) To provide for clear, concise and reasonable rules that are clearly needed and coordinated to the extent possible with stakeholders.

All rules affecting DOH programs are located within Title 246 WAC. Rules within Title 246 WAC fall under the authority of either the Secretary of Health; one of 17 health profession boards or commissions; or the State Board of Health.

Process

There are approximately 190 chapters of rules within Title 246 WAC. While not all chapters fall under the Secretary of Health's authority and not all chapters may directly be related to obtaining a permit, license, or inspection, DOH has determined that it is "good business" to review all rules and therefore will incorporate all 190 rule chapters in the formal review process.

The department has five areas or divisions of rulemaking: Office of the Secretary (OS), Environmental Public Health (EPH), Disease Control and Health Statistics (DCHS), Health Systems Quality Assurance (HSQA), and Prevention and

Community Health (PCH). Each is responsible for implementation of specific chapters of rules.

The agency's Regulatory Affairs Manager will be responsible for managing the review process, however, each division's rule coordinator will be responsible for recording its area's rule review activities.

The department currently reviews rules when a rule is open for amendment. A "rule" is defined as one section of a chapter. For example, WAC 246-101-015 is a rule. The department typically opens rules for amendment by either an entire chapter or by subject matter (a group of specific sections of a chapter). The department refers to these as "rule projects."

The department does not have the resources to include stakeholders in all rule reviews. A rule review may not result in immediate rule making, but the rulemaking will be prioritized according to need and resources available.

Step 1: Identify those rules currently under review.

Each division responsible for rule making will continue to review "rule projects" as they are opened based on prioritization for rule making. For those "rule projects" that are currently underway the area's rules coordinator will enter into the tracking system the:

- Actual start date. This is the date that the rule package (CR101, CR102 or CR105) was entered into the agency's Rules Management System.
- Estimated review completion date. This is the estimated date to file the CR103.

Step 2: Identify those rules that are not currently under review.

Using the tracking system, the division will identify those sections of rules that are not currently incorporated as part of a "rule project." The division will establish an estimated review start date that will allow for completion of the review before July 2018 and will enter it into the tracking system.

Step 3: Complete the Rule Review Summary Sheet

Department of Health has developed a rule review summary sheet to be completed for each rule. The review criteria are listed under Step 4.

Step 4: Enter the information from the Rule Review Summary Sheet into the tracking system.

At a minimum the tracking system shall be updated by the division rule's coordinator bi-annually, by June 30th and Dec. 31st each year.

The tracking system will identify and summarize by rule the information on the Rule Review Summary Sheet:

- Estimated review start date, and actual start date
- Estimated review completion date, and actual completion date
- Future review date
- Next steps
- Review status
- Need – is there a need for the rule?
- Reasonable and clear – Is the rule clear, concise and reasonable?
- Authority and Intent – Does the rule have the statutory authority or meet the legislative intent?
- Stakeholder Coordination – How was the review coordinated?
- Streamlining Identified – In accordance with the goals of SSB 5679, can the rule be streamlined? Did the rule review identify other streamlining opportunities?
- Reporting Requirement?
- Achieved intended result?

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- Staff conclusions – Repeal, retain without changes, or amend?

Step 5: Submit the Rule Review Summary Sheet to the Regulatory Affairs Manager and Annual Review of Benchmarks.

The Regulatory Affairs Manager will maintain all of the Rule Review Summary Sheets and will analyze annually the information collected to determine how DOH meets the following benchmarks:

- Each rule section is reviewed every five years;
- Policy, procedure, tracking system and summary sheets are reviewed for effectiveness;
- Beginning in 2018, identify the effectiveness of streamlining and efficiency efforts identified in the tracking system.

Department of Ecology Rules Review Process and Benchmarks

The Department of Ecology (Ecology) established a formal rule review process in May 2013. This process was designed in response to legislation passed in 2013 and findings in a 2012 performance audit conducted by the State Auditor's Office.

Ecology administers 165 chapters that can be found in Titles 173, 197, 317, 372, and 508. The rule review process includes all of the agency chapters, not just those related to obtaining licenses, permits, and inspections.

Ecology has an agency rules coordinator responsible for ensuring agency rule-writers follow the requirements of the Administrative Procedure Act and the Regulatory Fairness Act. The agency's Rules Coordinator is responsible for managing the rule review process, however, each of Ecology's ten environmental programs and its administrative program are responsible for conducting the formal review of the rules they implement.

The focus of Ecology's formal rule review process

A rule review is an assessment to provide the agency with information about whether or not a chapter is still needed or if changes are needed. Ecology's rule review process includes examining each rule against the following criteria:

1. Need - Is the chapter still needed?
2. Clarity - Should language in the chapter be clarified (without changing the effect of the rule)?
3. Consistency - Is the chapter consistent with other laws, rules, requirements, and business practices?
4. Streamline - Should the chapter be updated to streamline requirements related to processes?

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5. Regulatory Burden - Are there updates or changes that can be made to reduce the regulatory burden or compliance requirements, or are there any technical changes that are needed?
 6. Sunset - Can sunset provisions be applied to the chapter?
 7. Legislative Action - Are there suggested legislative changes?
 8. Other - Are there other changes needed?

How often Ecology's rules will be reviewed

The formal rule review process is timed to occur every two years, beginning in 2013, to inform Ecology's biennial program planning processes (first review was conducted to inform workload planning in 2013; next program plans are due in 2015). All Ecology chapters will be reviewed every two years except:

1. Any chapter that is going through active rule making at the time of the review cycle.
2. Any chapter that has been adopted since the last review was completed.

Ecology's first rule review is scheduled to be completed by December 2013

By December 2013 Ecology will have reviewed 87% of the chapters Ecology administers. The chapters not reviewed were either:

- Actively in rule making.
- Had an adoption date of July 1, 2012 or later.

How the results of the reviews are used

The results of the review are just one of the tools Ecology will use to determine agency rule-making activities. In deciding when to conduct a rule-making,

Ecology will also consider new legislation, feedback from regulated entities and other interested parties, new technologies, federal changes, and feedback from our customer surveys, along with other information. All of this information is considered during the biennial program planning process.

Benchmarks

Ecology has identified the following benchmarks to provide information to support our rule review process:

1. Customer Feedback

Every two years Ecology conducts a satisfaction survey of customers who have applied for a permit or received an inspection from the Agency. The first survey was conducted in 2002. The survey asks a variety of questions aimed at customer service, process improvement and web use. Based on this feedback data from our customers, we will use the following benchmarks to assist with the agency rule review process:

- For both permit applicants and inspected customers:
 - Percent of customers who agreed or strongly agreed that Ecology staff communicated clearly.
 - Percent of customers who found permit or regulatory information on the Ecology website was helpful.
- For permit applicant only:
 - Percent of customers who agreed or strongly agreed that Ecology staff informed the applicant what was needed to submit a complete permit application.
- For customers who received an inspection only:
 - Percent of customers who agreed or strongly agreed that Ecology staff provided the customer with useful technical information applicable to their facility or operation.

2. Permit Timeliness

Ecology also tracks permit timeliness as part of the Agency's performance measures. We plan to use this data as a benchmark.

3. Percent of Rules Reviewed

We will track the percent of rule chapters reviewed during each review cycle.