



# **IMPACTS OF SIGNIFICANT LEGISLATIVE RULE-MAKING REQUIREMENTS (2010–11)**

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**PRIOR REPORTS TITLED "REGULATORY REFORM UNDER ESHB 1010"**

**Office of Regulatory Assistance  
State of Washington**

**January 2012**



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## Introduction

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

Significant legislative rulemaking requirements include that agencies determine the costs and benefits of a new rule, determine least burdensome alternatives, coordinate regulations with the requirements of state and federal law, and develop an implementation, evaluation, and education plan.

A copy of RCW 34.05.328 is attached to this report.

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

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

The reports explain the agencies' experiences with significant legislative rulemaking for calendar years 2010 through 2011. They address the requirements for the overall report from ORA as set forth at RCW 34.05.328(6):

- (a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;
- (b) The costs incurred by state agencies in complying with this section;
- (c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;
- (d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;
- (e) The extent to which this section has improved the acceptability of state rules to those regulated; and
- (f) Any other information considered ... to be useful in evaluating the effect of this section.

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

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

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Agencies adopted 120 rules under the significant legislative rulemaking requirements from 2010 through 2011. This compares to the average of 150 significant legislative rules for the two prior two year periods. Topic areas for these rules were quite varied. A sampling of rules or topics from the various agencies is shown below. See the individual agency reports for the full listing.

### Department of Commerce

1 significant legislative rule adopted. Topic:

- Accreditation of lead-based paint training programs and the certification of firms and individuals conducting lead-based paint activities and renovation.

### Department of Ecology

10 significant legislative rules adopted. Sample topics included:

- Agricultural burning
- Reporting of emissions of greenhouse gases
- Shoreline management permit and enforcement procedures
- Accreditation of environmental laboratories
- Upper Kittitas groundwater rule
- Children's safe products – reporting rule

### Department of Fish and Wildlife

3 significant legislative rules adopted. Topics:

- HPA Procedures
- HPA Informal appeal of administrative actions
- HPA Formal appeal of administrative actions

### Department of Health

41 significant legislative rules adopted. Sample topics included:

- Osteopathic medicine and surgery
- Real-time tracking of ephedrine, pseudoephedrine, or phenylpropanolamine
- Greywater reuse for subsurface irrigation
- Large On-site Sewage Systems
- Women, Infant, and Children's Nutrition Program

- Competency for licensed nurses
- Reporting communicable diseases and animal bites
- Measures to prevent human disease (animals, birds, pets)

### Department of Labor and Industries

6 significant legislative rules adopted. Sample topics included:

- Vocational services
- Explosives
- Apprenticeship programs

### Department of Natural Resources

2 significant legislative rules adopted. Topics included:

- Burn permit fee increase
- Documentation and corner restoration forms changes

### 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

28 significant legislative rules adopted. Sample topics included:

- Medicaid Purchasing Administration/HRSA
- Gambling treatment programs
- Long term care
- Boarding homes
- Shelters for domestic violence victims

**Employment Security Department**

3 significant legislative rules adopted. Topics:

- Delinquent employer taxes
- General update to 18 unemployment insurance tax rules sections
- General update of 8 unemployment insurance benefit rule sections

**Forest Practices Board**

3 significant legislative rules adopted. Topics:

- Northern spotted owl
- Forest biomass, riparian open space program, watershed analysis

- Extension of small forest landowner road maintenance and abandonment plans (RMAP) performance period

**Office of the Insurance Commissioner**

22 significant legislative rules adopted. Sample topics included:

- Title insurance rate and filing
- Association health plans data reporting
- Guaranteed issue enrollment for persons under age 19
- Long-term care partnership

As noted in the 2010 Report, agencies reported that the requirements do add cost and time to the rule-making process. DSHS found that the months to complete rule-making ranged from 4 to 35. The Department of Health provided a more detailed summary, noting that the average time to complete a rule (20 months for a significant rule and six months for a “non-significant” rule) can be frustrating to stakeholders, board and commission members, and to the program staff members working on the rules. Frustration is particularly true for rules that by definition are significant legislative rules, but are not controversial or costly to the regulated public. Another area of concern is the complexity of analysis that is required because the time and resources needed to complete the analysis can quickly increase the cost of the rule and delay its adoption. Finally, Health notes that 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.

Consistent with the previous reporting period, almost all agencies commented that public involvement is a crucial and useful component of the rulemaking process. The agencies commonly reported that compliance with RCW 34.05.328 did not adversely affect the substance of rules adopted in the rule-making process. Many agencies did note that stakeholder outreach remains a standard practice, whether or not a rule is designated as a significant legislative rule, and adds value to the rulemaking process.

## Cost Impacts

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

### Department of Commerce

Staff costs for the one rule adopted amounted to less than \$50,000 during the entire rule-making process and were covered by federal funds. Additional costs were not significant.

### Department of Ecology

Ecology does not track costs separately from other rule-making activities but notes that additional costs are incurred for preparing and reviewing documentation to meet the requirements, gathering data and other information, and other necessary tasks.

### Department of Fish and Wildlife

No reported costs.

### Department of Health

The Department, State Board of Health and the related boards and commissions spent \$1,675,544 to develop the 41 significant rules. The average costs are higher than previous reporting periods.

#### Average Costs per Rule

Significant	Non-Significant
\$40,867	\$5,246

### Department of Labor and Industries

L&I reported additional but unquantified staffing costs for developing cost-benefit analyses and for review by its economists and assistant attorneys general.

### Department of Natural Resources

No reported costs incurred.

### Department of Revenue

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

### Department of Social and Health Services

DSHS reported no additional costs were identified other than staff time and mailing costs for stakeholder outreach. Some rules also required conducting cost benefit analysis, and these costs were absorbed within normal operations.

### Employment Security Department

ESD reported that the costs of complying with the requirements are minimal. Analysis of the costs and benefits usually takes no more than 4 to 8 hours per filing.

### Forest Practices Board

Forest Practices Board reported that any additional costs were unquantified and associated with staff time in planning and implementing the requirements.

### Office of the Insurance Commissioner

\$200,000 per year.

## Legal Actions

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No agency faced legal action for failure to comply with the requirements of RCW 34.05.328.

## Adverse Effects

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

## Rule Acceptability

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

- Commerce noted that their regulated stakeholders supported delegation of the lead-based paint program from the EPA to Commerce because the state can provide training and levy fines at significantly less cost than the federal government.
- Ecology found that providing the public more detail about information used in rule-making decisions helps interested parties understand why Ecology drafted the rule the way they did.
- Health finds anecdotal evidence from public comments about proposed rules suggesting that stakeholders appreciate the department's efforts to communicate with and include them in rule development. In some instances, the department has amended preliminary cost-benefit analysis to provide clarity or incorporate additional data.
- The Department of Natural Resources notes that adoption of the WAC amendment allows the Survey Program to require more accurate forms.
- The Forest Practices Board noted that the process increased the information available to the regulated community, which results in more specific comments from stakeholders and a better understanding of the decision-making by the agency.
- The Office of Insurance Commissioner reports that acceptance of rules by those regulated has been improved due to the attitude and approach of Office staff. They also noted they thought the process could be confusing to consumers.

## Stakeholder Comments

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ORA offered Futurewise, Washington Environmental Council, Association of Washington Business, National Federation of Independent Business, Washington Association of Counties, Association of Washington Cities, Association of Washington Business and Washington State Labor Council. One response came from the Association of Washington Business (AWB) who submitted a letter in support of maintaining the significant legislative rulemaking procedure. AWB comments that RCW 34.05.328 has generally been a great help in requiring state agencies to justify rule making. They



offered several suggestions designed to ensure participation of all relevant state agencies, as well as expansion of the requirements to local governments. Please see their letter for detail of the summary below.

1. Amend statute to require administrative agencies to produce two versions of a proposed rule. One version should reflect what the Legislature has directed and the other could include additional information that the agency thinks might have value. (This is similar to AWB's recommendation in the past report)
2. Create a pathway for a regulated party to bring forward an alternative version of a rule and to have it evaluate by the agency proposing the rule. (This is similar to AWB's recommendation in the past report)
3. Extend RCW 34.05.328 to general wastewater discharge permits and other permit or licensing programs that have significant cost implications.

## **Other Information from Agencies**

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The Department of Health, State Board of Health and the related boards and commissions invite stakeholder participate in rule development as a core value and find that although this level of public involvement increases the overall cost of rule making, those efforts tend to increase public acceptance of the rules.

Ecology shared specific examples of how compliance with the section is valuable to the agency's rule-making process. Ecology developed templates to standardize how employees prepare and present rule information, which interested parties have come to expect. Specific comments from stakeholders help staff engage commenters in conversations, which may lead to language changes in the adopted rule. Consideration of the information gathered for these requirements, along with relevant science and input from interested parties, ensures an enhanced decision-making process.

The Department of Revenue also reported that their emphasis on identifying and reaching out to stakeholders to encourage their involvement early in the rule-making process strengthens relationships, encourages positive participation, and results in rules providing needed information in a useful manner. Using electronic mail list serves for notification and using the Internet to make information readily available are some of Revenue's ongoing efforts to make rulemaking information more accessible to the public.

The Office of Insurance Commissioner notes one goal is to increase the use of the relevant and most reliable data to support their initial assessment of rule proposal, so that rules reflect what is earned from the data.

## **APPENDICES**

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Text of RCW 34.05.328 Significant Legislative Rules

Comment letters from Business Groups

### **Agency Reports**

Department of Commerce

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 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 must:

(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

(c) Provide notification in the notice of proposed rule making under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice must include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis must 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 must 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 must place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan must 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 must do all of the following:

(a) 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)(a), the agency must report to the legislature pursuant to (b) of this subsection;

(b) 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 under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045;

(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; or

(viii) Rules of the department of revenue that adopt a uniform expiration date for reseller permits as authorized in RCW 82.32.780 and 82.32.783.

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

[2011 c 298 § 21; 2011 c 149 § 1; 2010 c 112 § 15. Prior: 2003 c 165 § 2; 2003 c 39 § 13; 1997 c 430 § 1; 1995 c 403 § 201.]

**Notes:**

**Reviser's note:** This section was amended by 2011 c 149 § 1 and by 2011 c 298 § 21, 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).

**Purpose -- Intent -- Agency transfer -- Contracting -- Effective date -- 2011 c 289:** See notes following RCW 19.02.020.

**Effective date -- 2011 c 149:** See note following RCW 43.42.010.

**Effective date -- 2010 c 112 §§ 2, 3, 11, 12, and 15:** See note following RCW 82.32.780.

**Retroactive application -- 2010 c 112:** See note following RCW 82.32.780.

**Findings -- Short title -- Intent -- 1995 c 403:** "(1) The legislature finds that:

(a) One of its fundamental responsibilities, to the benefit of all the citizens of the state, is the protection of public health and safety, including health and safety in the workplace, and the preservation of the extraordinary natural environment with which Washington is endowed;

(b) Essential to this mission is the delegation of authority to state agencies to implement the policies established by the legislature; and that the adoption of administrative rules by these agencies helps assure that these policies are clearly understood, fairly applied, and uniformly enforced;

(c) Despite its importance, Washington's regulatory system must not impose excessive, unreasonable, or unnecessary obligations; to do so serves only to discredit government, makes enforcement of essential regulations more difficult, and detrimentally affects the economy of the state and the well-being of our citizens.

(2) The legislature therefore enacts chapter 403, Laws of 1995, to be known as the regulatory reform act of 1995, to ensure that the citizens and environment of this state receive the highest level of protection, in an effective and efficient manner, without stifling legitimate activities and responsible economic growth. To that end, it is the intent of the legislature, in the adoption of chapter 403, Laws of 1995, that:

(a) Unless otherwise authorized, substantial policy decisions affecting the public be made by those directly accountable to the public, namely the legislature, and that state agencies not use their administrative authority to create or amend regulatory programs;

(b) When an agency is authorized to adopt rules imposing obligations on the public, that it do so responsibly: The rules it adopts should be justified and reasonable, with the agency having determined, based on common sense criteria established by the legislature, that the obligations imposed are truly in the public interest;

(c) Governments at all levels better coordinate their regulatory efforts to avoid confusing and frustrating the public with overlapping or contradictory requirements;

(d) The public respect the process whereby administrative rules are adopted, whether or not they agree with the result: Members of the public affected by administrative rules must have the opportunity for a meaningful role in their development; the bases for agency action must be legitimate and clearly articulated;

(e) Members of the public have adequate opportunity to challenge administrative rules with which they have legitimate concerns through meaningful review of the rule by the executive, the legislature, and the judiciary. While it is the intent of the legislature that upon judicial review of a rule, a court should not substitute its judgment for that of an administrative agency, the court should determine whether the agency decision making was rigorous and deliberative; whether the agency reached its result through a process of reason; and whether the agency took a hard look at the rule before its adoption;

(f) In order to achieve greater compliance with administrative rules at less cost, that a cooperative partnership exist between agencies and regulated parties that emphasizes education and assistance before the imposition of penalties; and

(g) Workplace safety and health in this state not be diminished, whether provided by constitution, by statute, or by rule." [1995 c 403 § 1.]

**Application -- 1995 c 403 §§ 201, 301-305, 401-405, and 801:** "Sections 201, 301 through 305, 401 through 405, and 801 of this act shall apply to all rule making for which a statement of proposed rule making under RCW 34.05.320 is filed after July 23, 1995." [1995 c 403 § 1102.]

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

Expedited adoption: RCW 34.05.353.



VIA REGULAR MAIL and E-MAIL

January 25, 2012

Ms. Faith Lumsden, Director  
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 input on the current status and effects of Washington's Administrative Procedure Act (APA) "significant legislative rule-making process" (RCW 34.05.328).

From AWB's perspective, the use of significant legislative rule making has been an extremely valuable part of the rule-making process since its adoption. In particular, RCW 34.05.328 has generally been a great help in requiring state agencies to justify rule making.

We believe, however, 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.

Included in this letter are recommendations for improving the use of RCW 34.05.328. These recommendations are consistent with and build off of the recommendations made in our letter submitted to you in January 2010 when you asked for comments regarding significant legislative rule making.

First, we believe the statute should be amended to require administrative agencies to produce two versions (or maybe one version with embedded options) of a proposed rule. The first version would be that which the agency believes most closely conforms to

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what the Legislature has directed. The second version could include additional information that the agency thinks might have value (i.e., the policy initiatives). We think agencies should be more sincere in their efforts to identify the incremental gains/losses, cost implications to the implementing agency and regulated entities, etc. prior to final rule adoption. To this end, we think the significant legislative rule requirement should be front-end loaded in the rule proposal process to meet the statutory intent of RCW 34.05.328.

Second, we also think there could be value in creating a pathway for a regulated party (individual or association) to bring forward an alternative version of a rule and to have it evaluated by the agency proposing the rule. In our experience, agencies tend to overlook the requirements to consider whether there are alternatives to a proposed rule. "Alternative versions" of a proposed rule are never produced and thus the determination of which option is "least burdensome . . . for those required to comply" is never considered. By front-loading the process and allowing a regulated party to suggest an alternative rule, we believe that agencies would adopt better rules that have the support of the regulated community.

Finally, we suggest extending RCW 34.05.328 to general wastewater discharge permits and other permit or licensing programs that have significant cost implications. Currently, the statute only addresses rule development. However, general permits have significant cost impacts that affect broad sections of Washington's economy. Permits and other licenses could benefit from the type of analysis required under RCW 34.05.328.

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,



Gary Chandler  
Vice President Government Affairs  
Association of Washington Business

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# Department of Commerce

Innovation is in our nature.

## Response about activities related to significant legislative rules.

### 1. Number of significant legislative rules your agency adopted from Jan. 1, 2010 through Dec. 31, 2011:

*During the requested period the Department of Commerce adopted only 1 significant legislative rule: Chapter 365-230 WAC: Accreditation of lead-based paint training programs and the certification of firms and individuals conducting lead-based paint activities and renovation: Last Update: 3/21/1.*

*This update was required when the legislature passed SHB 2745 which delegated the lead based painting and renovation program from the federal government to the Department of Commerce. Rules were updated to be compliant with federal rules.*

### 2. Title or description for each rule:

*WAC Sections 365-230-010 through 365-230-385*

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

*Compliance with this section did not affect the substance of rules adopted in this rule-making.*

### 4. Costs of complying with the requirements.

*The total cost of adopting the rule involved portions of staff time during the rule-making process including public input sessions. Those costs amount to less than \$50,000 during the entire rule-making process. These costs were covered by the federal funds we receive to administer the program. Additional costs due to this section were not significant.*

### 5. Info on any legal actions from subsection c above.

*None*

### 6. Narrative responses to parts d, e, and f.

*The delegation of this program from the Environmental Protection Agency to the Department of Commerce was supported by the regulated stakeholders because the state can provide training and levy fines at significantly less cost than the federal government.*

For more information contact Nick Demerice at: 360.725.4010 or [nick.demerice@commerce.wa.gov](mailto:nick.demerice@commerce.wa.gov)



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 description of significant legislative rules, proposed and adopted, by Ecology between January 1, 2010 and December, 2011.
- A description of how Ecology’s compliance with RCW 34.05.328 affected the substance of rules adopted.
- A summary of the costs incurred by Ecology in complying with RCW 34.05.328.
- Description of any legal actions against Ecology for failure to comply with RCW 34.05.328, costs of such actions, and the status or outcome of the action.
- The extent to which significant legislative rule-making requirements have adversely affected Ecology’s ability to fulfill its legislatively prescribed mission.
- Descriptions of how these requirements have improved the acceptability of these rules by the regulated community.
- A summary of comments from interested parties on the impacts of the significant legislative rule-making requirements.

## Significant Legislative Rule-making Activities

January 1, 2010 – December 31, 2011

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

Ecology does not track “significant legislative rule making” by section but rather by rule-making activity. So if only one section in a rule making included significant legislative changes the entire rule making is included in this report. Therefore the section count is for all sections included in a rule making not just those sections adopting significant legislative rules.

Below is a description of significant legislative rule-making activities, proposed and adopted, by Ecology between January 1, 2010 and December, 2011.

### Ecology completed 10 significant legislative rule-making activities between January 1, 2010 and December, 2011

- We filed 13 original Rule Proposal notices (CR-102 filings) and 11 Rule-Making Orders (CR-103).
- One CR-103 filing was to make a correction to the associated CR-103 filing.
- We also filed CR-102 continuances to extend the public comment period and a CR-102 supplemental filing to revise the rule proposal and hold another comment period
- Ecology adopted rule language related to 14 WAC chapters. Ecology adopted rules relating to 174 WAC sections (95 amended, 76 new, 3 repeals)

### Significant Legislative Rule-making Activities January 2010 – November 2011

#### Rules Adopted

<i>Program</i>		<i>Adoption Date</i>	<i>WAC Chapter</i>	<i>Chapter Title</i>
<b>Air Quality</b>	<b>1</b>	11/10/2010	173-430	Agricultural burning
	<b>2</b>	12/1/2010	173-441	Reporting of emissions of greenhouse gases
	<b>3</b>	3/1/2011	173-400	General regulation for air pollution sources
	<b>4</b>	5/31/2011	173-455	Air quality fee regulation
	<b>5</b>	8/10/2011	173-422A	Motor vehicle emission inspection

<b>Shorelands and Environmental Assistance</b>	<b>6</b>	2/11/2011	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
			173-26	State master program approval/amendment procedures and master program guidelines
			173-27	Shoreline management permit and enforcement procedures
<b>Environmental Assessment Program</b>	<b>7</b>	8/9/2010	173-50	Accreditation of environmental laboratories
<b>Water Resources</b>	<b>8</b>	12/22/2010	173-539A	Upper Kittitas groundwater rule
<b>Waste 2 Resources</b>	<b>9</b>	7/21/2011	173-334	Children's safe products - reporting rule
<b>Water Quality</b>	<b>10</b>	4/2/2011 & 5/9/2011	173-201A	Water quality standards for surface waters of the state of Washington

**Rules Proposed – not adopted**

<b>Program</b>		<b>Proposed</b>	<b>WAC Chapter</b>	<b>Chapter Title</b>
<b>Water Resources</b>	<b>1</b>	Not adopted, proposal withdrawn. On hold due to EO 11-03.	173-525	Grays-Elochoman Instream resources protection and watershed management program - WRIA 25
	<b>2</b>	Not adopted, proposal withdrawn. On hold due to EO 11-03.	173-526	Cowlitz Instream resources protection and watershed management program - WRIA 26
	<b>3</b>	Rule-making currently in progress.	173-175	Dam safety

## **Affect on Rule Substance.**

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

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

To help share information, we developed templates to standardize how employees prepare and present rule information, including information related to these requirements. Interested parties have shown an increased expectation for the documents and more awareness of the types of information they contain. Specific comments received from interested parties help staff understand the nature of commenters concerns and find ways to engage them in conversation. These conversations may lead to language changes Ecology incorporates into the final rule adoption.

## **Compliance costs.**

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

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

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

These costs vary depending on the complexity of the rule making and classifications of staff involved.

## **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 1, 2010 and December 31, 2011, 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 they promote analysis and deeper understanding of rule impacts. This supports Ecology's ability to fulfill its legislatively prescribed mission.

**Rule Acceptability.**

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

Because of 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.



## Significant Legislative Rules Report for 2010-11 Washington Department of Fish & Wildlife

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### 1. Number of significant legislative rules adopted from Jan. 1, 2010 through Dec. 31, 2011

Amendments to three significant legislative rule sections were proposed and adopted during the time period from Jan. 1, 2010 through Dec. 31, 2011. **All three rule sections were included under one CR-102 and one CR-103P.**

However, the adopted changes to these sections were in direct response to SHB 2935, and they related only to HPA appeals, not to HPA projects or permits. Therefore, the requirements of RCW 34.05.328 did not apply to these WAC sections. RCW 34.05.328(5)(b)(v) states that “This section [34.05.328] does not apply to rules the content of which is explicitly and specifically dictated by statute.”

### 2. Rule titles and descriptions

#### WAC 220-110-030 Hydraulic project approvals – Procedures.

WAC 220-110-030 addresses the requirements necessary to secure a hydraulic project approval (HPA), as well as the process and deadlines involved in doing so. 2010 SHB 2935, “Environmental and land use hearings boards. Consolidation,” consolidated HPA appeals and other appeals within the Pollution Control Hearings Board. This consolidation required amending this WAC section to delete a WAC reference and delete a reference to the hydraulic appeals board.

#### WAC 220-110-340 Informal appeal of administrative actions.

WAC 220-110-340 outlines the informal appeal process for denial of an HPA. SHB 2935 changed the process for informal HPA appeals, so WDFW had to amend this section to reflect SHB 2935’s requirements. These amendments included changes to filing and response-time deadlines, appeal-request requirements, procedures for informal appeals, and options for formal appeals.

#### WAC 220-110-350 Formal appeal of administrative actions.

WAC 220-110-350 outlines the formal appeal process for denial of an HPA or refusal of the department to initiate an informal appeal. As with the other two sections described herein, SHB 2935 necessitated amending this section to align it with changes made by SHB 2935. These amendments included changes to filing and response-time deadlines, appeal-request requirements, and procedures for formal appeals.

### 3. Whether compliance with RCW 34.05.328 affected rule substance

Compliance with RCW 34.05.328 did not affect the substance of these rule sections because the changes required by SHB 2935 related only to HPA appeals, not HPA projects or permits.

Also, the changes were in direct response to SHB 2935, so the requirements of RCW 34.05.328 do not apply to these WAC sections. RCW 34.05.328(5)(b)(v) states that “This section [34.05.328] does not apply to rules the content of which is explicitly and specifically dictated by statute.”

**4. Cost of complying with RCW 34.05.328 requirements**

As indicated above, compliance with RCW 34.05.328 did not affect the substance of these rule sections because RCW 34.05.328 was not applicable. Therefore, there were no costs of complying with RCW 34.05.328’s requirements.

**5. Information on any legal actions maintained based upon alleged failure of agency compliance with RCW 34.05.328**

There were no legal actions maintained as a result of the changes to these rule sections.

**6. Extent RCW 34.05.328 has adversely affected agency capacity to fulfill its legislatively prescribed mission**

N/A; RCW 34.05.328 did not apply to these rule amendments.

**7. Extent RCW 34.05.328 has improved acceptability of state rules to those regulated**

N/A; RCW 34.05.328 did not apply to these rule amendments.

**8. Any other useful information for OFM to use in evaluating effects of RCW 34.05.328**

WDFW has no information to offer.

# Significant Legislative Rule-Making Report

January 1, 2010 – December 31, 2011



For more information or additional copies of this report contact:

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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 proposed and adopted significant legislative rules filed with the Code Reviser from January 1, 2010 through December 31, 2011 by the Department of Health, the State Board of Health, and the 16 health professions boards and commissions with independent rule-making authority. The rule making activities described in this report are in compliance with Executive Order 10-06 and Executive Order 11-03 which imposed a rules moratorium for non-critical rule making activities. The Department of Health, State Board of Health, and the health professions boards and commissions count rule making activities by topic, not by the number of rule sections. This report includes the proposal of 39 significant legislative rules and the adoption of 41 significant legislative rules. Some of the rules adopted during this time period were proposed in late 2009, and some of the rules proposed in 2010 were suspended before adoption under the Governor's Executive Order 10-06.

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

**Table 1. Significant Legislative Rules Proposed, Adopted and Filed With the Code Reviser January 1, 2010 through 2011**

Source: Department of Health Official Rule-Making Files

### Department of Health

RCW or Session Law	Authority	WAC and Rule Title	Number of WAC Sections Proposed (CR-102)	Number of WAC Sections Adopted (CR-103)	Rule Adoption Date	Rule Cost
RCW 18.35.161 Chapter 301, Laws of 2009)	Board of Hearing and Speech	Chapter 246-828 WAC Hearing and Speech. Amending the chapter to add the requirements, including fees, for the new speech-language pathology assistant profession.	6	6	07/20/10	\$15,761
RCW 18.57.005; 18.130.050	Board of Osteopathic Medicine and Surgery	New WAC 246-853-650 - adding a new section for office-based surgery stand.	1	1	12/17/10	\$11,212
RCW 18.130.050, 18.57.005, 18.57A.020	Board of Osteopathic Medicine and Surgery	WAC 246-853-640 creating a new section for Non-Surgical Medical Cosmetic Procedures (osteopathic physicians) and creating a new section, WAC 246-854-230 for Non-Surgical Medical Cosmetic Procedures (osteopathic physician assistants).	2	2	03/31/11	\$6,387

RCW or Session Law	Authority	WAC and Rule Title	Number of WAC Sections Proposed (CR-102)	Number of WAC Sections Adopted (CR-103)	Rule Adoption Date	Rule Cost
Chapter 18.57 RCW and Chapter 18.57A RCW	Board of Osteopathic Medicine and Surgery	Chapter 246-853 WAC (osteopathic physicians) and Chapter 246-854 WAC (osteopathic physician assistants), creating new sections for management of chronic noncancer pain; and repealing existing pain management rules, WACs 246-853-510, 246-853-520, 246-853-530 and 246-853-540 (osteopathic physicians) and 246-854-120, 246-854-130, 246-854-140 and 246-854-150 (osteopathic physician assistants).	28	32	05/02/11	\$13,220
RCW 18.54.070	Board of Optometry	WAC 246-851-XXX Optometry Multicultural Education.	1	Suspended until 2012 due to EO 10-06		
RCW 18.64.005(7) ; RCW 69.50.201	Board of Pharmacy	WAC 246-887-170, amending the section to include carisoprodol in schedule IV of the Uniform Controlled Substances Act.	CR-102 filed 08/04/09	1	01/05/10	\$22,799
RCW 69.43.165	Board of Pharmacy	Chapter 246-889 WAC – amending to establish a statewide real-time electronic methamphetamine precursor tracking system for retail sales of over-the-counter medications containing ephedrine, pseudoephedrine, or phenylpropanolamine.	12	12	09/08/11	\$37,027
RCW 18.64.005	Board of Pharmacy	WAC 246-887-100, amending to add synthetic cannabinoids and substituted cathinones to the Schedule 1 controlled substance list.	1	1	11/01/11	\$1,700

RCW or Session Law	Authority	WAC and Rule Title	Number of WAC Sections Proposed (CR-102)	Number of WAC Sections Adopted (CR-103)	Rule Adoption Date	Rule Cost
RCW 18.25.0171 18.130.050 (1) (12)	Chiropractic Quality Assurance Commission	WAC 246-808-560 - Documentation of Care Chiropractic Quality Assurance Commission. Amends the documentation requirements to ensure chiropractors are providing thorough and timely documentation that reflects a patient's presenting condition, treatment plan, progress, etc., and clarifies the existing documentation requirement for chiropractors.	1	1	07/19/10	\$2,026
RCW 18.32.040, 18.130.064	Dental Quality Assurance Commission	WAC 246-817-701 Administration of anesthetics agents for dental procedures and WAC 246-817-722 Defibrillator.	2	2	11/03/10	\$5,515
RCW 18.32.040, 18.130.064	Dental Quality Assurance Commission	WAC 246-817-220 Inactive License - creating a new section to establish an inactive dentist license status.	1	1	02/04/11	\$6,245
Chapter 18.32 RCW	Dental Quality Assurance Commission	Chapter 246-817 WAC, Establishing new sections for the management of chronic noncancer pain by dentists.	14	14	05/02/11	\$21,683
Chapter 18.84 RCW	Department of Health	Chapter 246-926 WAC, amending to add licensure requirements for Radiologist Assistants, an advanced level radiologic technologist.	CR-102 filed 12/01/09	9	04/27/10	\$10,078
Chapter 70.54 RCW	Department of Health	Chapter 246-145 WAC, Body Art, Body Piercing, Electrology and Tattooing Standards for Sterilization Procedures and Infection Control.	8	8	05/27/10	\$6,065

RCW or Session Law	Authority	WAC and Rule Title	Number of WAC Sections Proposed (CR-102)	Number of WAC Sections Adopted (CR-103)	Rule Adoption Date	Rule Cost
HB1548 (Chapter 31, Laws of 2011)	Department of Health	New Chapter 246-980 WAC, Certification Requirements for Home Care Aides.	13	13	07/20/10	\$3,6031
RCW 70.41.030	Department of Health	Chapter 246-320 WAC -- Hospital Licensing Regulations (Construction Standards only) -- updating sections -500 (Applicability of WAC 246-320-500 through 246-320-600), -505 (Design, construction review, and approval of plans), and -600 (Washington state amendments).	3	3	08/18/10	\$10,216
Chapter 18.135 RCW Chapter 43, Laws of 2009	Department of Health	Chapter 246-826 WAC – Expand the scope of practice for health care assistants to administer certain medications.	4	4	09/13/10	\$8,006
RCW 43.70.700 and Chapter 215, Laws of 2008	Department of Health	WAC 246-780-001 through -060 Farmers Market Nutrition Program (FMNP).	10	10	10/15/10	\$7,921
Chapter 18.290 RCW	Department of Health	Chapter 246-825 WAC establishing new rules for Genetic Counselors.	12	12	11/01/10	\$19,837
RCW 90.46.015	Department of Health	Chapter 246-274 WAC - creating a new chapter for greywater reuse for subsurface irrigation.	23	23	12/28/10	\$117,437



RCW or Session Law	Authority	WAC and Rule Title	Number of WAC Sections Proposed (CR-102)	Number of WAC Sections Adopted (CR-103)	Rule Adoption Date	Rule Cost
RCW 70.168.050, 70.168.060	Department of Health	WAC 246-976-001 through -400, -890, -920, and -950--EMS and Trauma System Prehospital rules and standards for training, licensure and verification, and prehospital system administration.	34	34	03/22/11	\$97,260
RCW 70.118B.040	Department of Health	Chapter 246-272B WAC - Large On-site Sewage System (LOSS) Regulations.	68	68	05/25/11	\$632,208
RCW 18.130.040	Department of Health	Chapter WAC 246-940-005 through WAC 246-940-990, creating a new chapter for certified animal massage practitioners.	12	12	06/24/11	\$4,120
Chapter 70.225 RCW	Department of Health	Title 246 WAC - Adding new chapter for Prescription Monitoring Program (PMP).	11	11	07/27/11	\$44,282
Chapter 18.06 RCW	Department of Health	Chapter 246-803 WAC, creating a new chapter for east asian medicine practitioner, which will also include acupuncture, and repealing chapter 246-802 WAC the existing chapter for acupuncture.	46	46	08/22/11	\$13,366
RCW 70.98.050	Department of Health	Chapter 246-225A WAC , Dental X-Ray Radiation Safety and Diagnostic Imaging Quality Standards.	10	10	09/07/11	\$14,000
Chapter 70.54 RCW	Department of Health	Chapter 246-102 WAC Cancer Registry.	8	8	10/05/11	\$25,956

RCW or Session Law	Authority	WAC and Rule Title	Number of WAC Sections Proposed (CR-102)	Number of WAC Sections Adopted (CR-103)	Rule Adoption Date	Rule Cost
RCW 43.70.120 and 7C.F.R. 246	Department of Health	WAC 246-790-010 through -130 Women, Infant, and Children's Nutrition Program Authorized Retailers.	18	18	11/21/11	\$86,710
RCW 70.119A.170	Department of Health	Chapter 246-296 WAC Drinking Water State Revolving Fund Loan Program (DWSRF).	18	18	12/19/11	\$26,578
SHB 2430 (Chapter 92, Laws of 2010)	Department of Health	Chapter 246-926 WAC, establishing licensure requirements for cardiovascular invasive specialists.	6	Hearing scheduled for 01/31/12		
RCW 18.130.050, 18.71.017, 18.71A.020	Medical Quality Assurance Commission	WAC 246-919-606 Non-Surgical Medical Cosmetic Procedures (Medical physicians) and WAC 246-918-126 Non-Surgical Medical Cosmetic Procedures (Medical physician assistants).	CR-102 filed 12/02/09	2	05/05/10	\$18,953
Chapter 18.71 RCW 18.71A RCW	Medical Quality Assurance Commission	WACs 246-919-850 through 246-919-863 (physicians) and WACs 246-918-800 through 246-918-813 (physician assistants), creating new sections for management of chronic noncancer pain, and repealing existing rules; WACs 246-919-800 through 246-919-830 (physician).	32	32	05/24/11	\$42,339

RCW or Session Law	Authority	WAC and Rule Title	Number of WAC Sections Proposed (CR-102)	Number of WAC Sections Adopted (CR-103)	Rule Adoption Date	Rule Cost
RCW 18.79.110, 18.130.050	Nursing Care Quality Assurance Commission	WAC 246-840-581 Early remediation program purpose; WAC 246-840-582 Early remediation program definitions; WAC 246-840-583 Early remediation program criteria.	3	3	08/17/10	\$10,487
RCW 18.79.010, 18.79.110	Nursing Care Quality Assurance Commission	Chapter 246-840 WAC New rule for the Nursing Care Quality Assurance Commission mandatory continuing competency for licensed nurses.	11	11	11/24/10	\$44,680
Chapter 18.79 RCW	Nursing Care Quality Assurance Commission	WACs 246-840-460 through -493, creating new sections for management of noncancer pain for advanced registered nurse practitioners.	14	14	05/02/11	\$25,368
Chapter 18.88A RCW	Nursing Care Quality Assurance Commission	WAC 246-841-530 through 246-841-585 creating new sections establishing alternative programs for home care aides-certified and medical assistants-certified to qualify for nursing assistant certification.	11	11	07/27/11	\$2,474
Chapter 18.22 RCW	Podiatric Medical Board	Chapter 246-922 WAC, creating new sections for management of chronic noncancer pain for podiatrists, and repealing existing rules, WACs 246-922-510, 246-922-520, 246-922-530, and 246-922-540.	18	18	05/02/11	\$12,667

RCW or Session Law	Authority	WAC and Rule Title	Number of WAC Sections Proposed (CR-102)	Number of WAC Sections Adopted (CR-103)	Rule Adoption Date	Rule Cost
RCW 18.92.030	Veterinary Board of Governors	WAC 246-935-400 through WAC 246-935-440. Adding a new section to define nondiscretionary functions used in preparation, and the administration of, legend drugs, nonlegend drugs and controlled substances associated with the practice of veterinary medicine which may be delegated to a licensed veterinary technician by a licensed veterinarian.	CR-102 filed 12/10/09	5	03/01/10	\$749
RCW 18.92.030	Veterinary Board of Governors	WAC 246-933-320 General requirements for all veterinary medical facilities - amendments to veterinary patient record requirements only.	1	1	05/18/10	\$1,676
RCW 18.92.030	Veterinary Board of Governors	Chapter 246-935 WAC Qualifying Practical Experience. WAC 246-935-145 through WAC 246-935-255. Adding new sections for veterinary technician training and experience.	14	14	05/18/10	\$4,392

## State Board of Health

RCW or Session Law	Authority	WAC and Rule Title	Number of WAC Sections Proposed (CR-102)	Number of WAC Sections Adopted (CR-103)	Rule Adoption Date	Rule Cost
RCW 43.20.050	State Board of Health	Notifiable Conditions. Chapter 246-101 WAC, relating to reporting of communicable diseases and animal bites, excluding WAC 246-101-520 (Special conditions - AIDS and HIV), and WAC 246-101-635 (Special conditions - AIDS and HIV).	33	33	01/04/11	\$131,470
RCW 43.20.050	State Board of Health	WAC 246-100-191, Animals, birds, pets - Measures to prevent human disease; WAC 246-100-201, Birds - Measures to prevent psittacosis; WAC 246-100-192, Animals in public settings - Measures to prevent human disease; and WAC 246-100-197, Rabies - Measures to prevent human disease. Proposing amendments to the two existing rules, WAC 246-100-191 and -201; and proposing two new rules, WAC 246-100-192 and -197.	4	4	01/21/11	\$71,331
RCW 43.20.050	State Board of Health	WAC 246-105-040 Requirements based on national immunization guidelines.	1	1	02/11/11	\$5,312

In November 2010 Governor Gregoire issued Executive Order 10-06 suspending all non-critical rule making activities. Prior to the Governor's executive order, changes in staff work load and available resources had made it necessary for the Department of Health, State Board of Health, and the related boards and commissions to set priorities for their rule making efforts. Despite both these changes to rule making activities, the Department of Health, State Board of Health, and related boards and commissions adopted nearly the same number of significant legislative rules as in the previous reporting period (November 2007 through October 2009:41 compared to 38 in the previous reporting period). Patient safety and legislative mandates continue to be the highest priority. The complexity of the rule making activities continues to increase, and the analyses require additional staff time and resources.

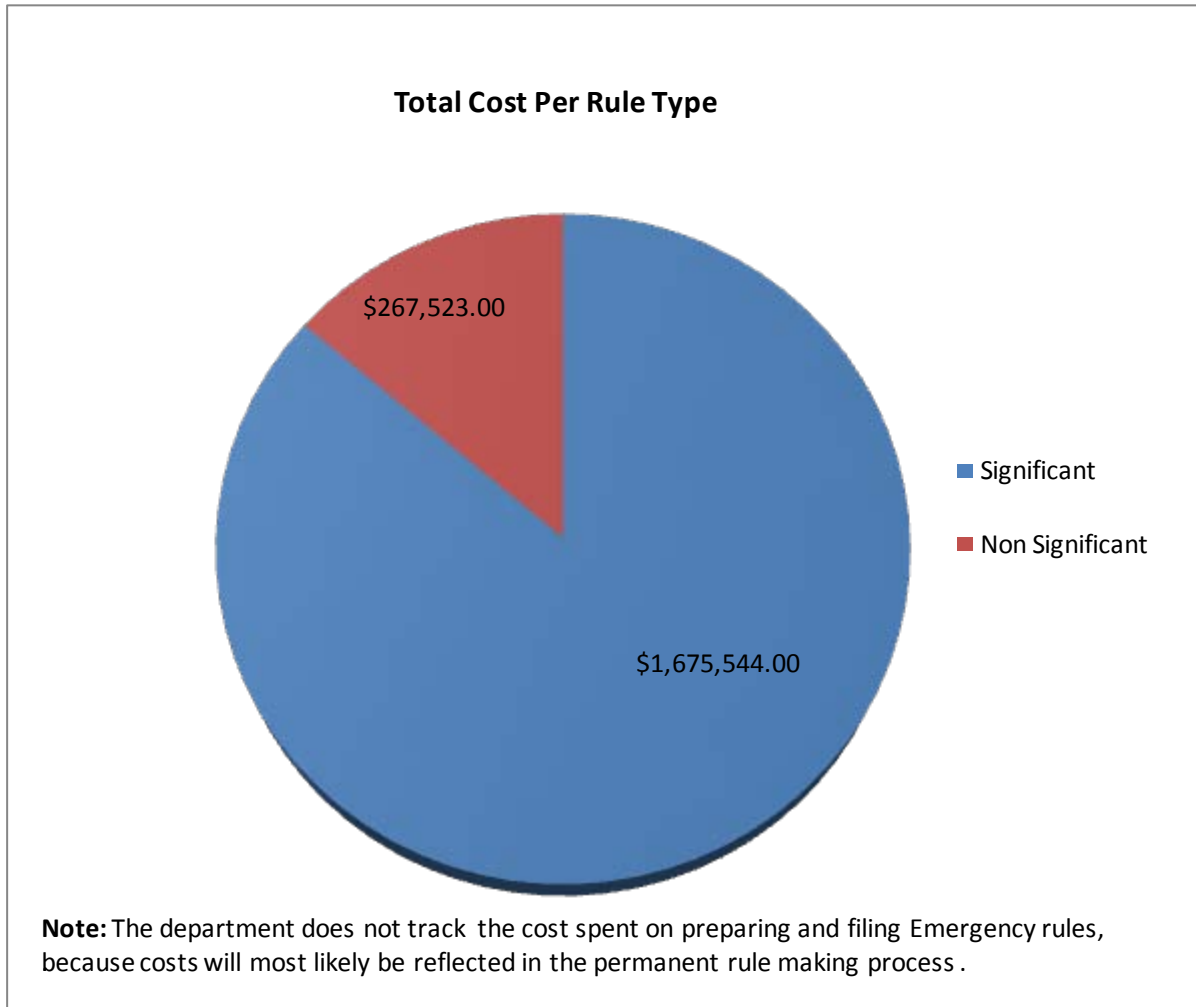
The Department of Health, State Board of Health, and the related boards and commissions have also adopted more rules using the expedited rule-making process (15 rules) and the exception rule-making process (27 rules). In the previous reporting period, four rules were filed using the expedited process and 25 using the exception process. We continue to see an increase in rules needing to be 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.

There has also been an increase in the 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. Ten emergency rules were adopted during this time period, compared to six during the previous reporting period.

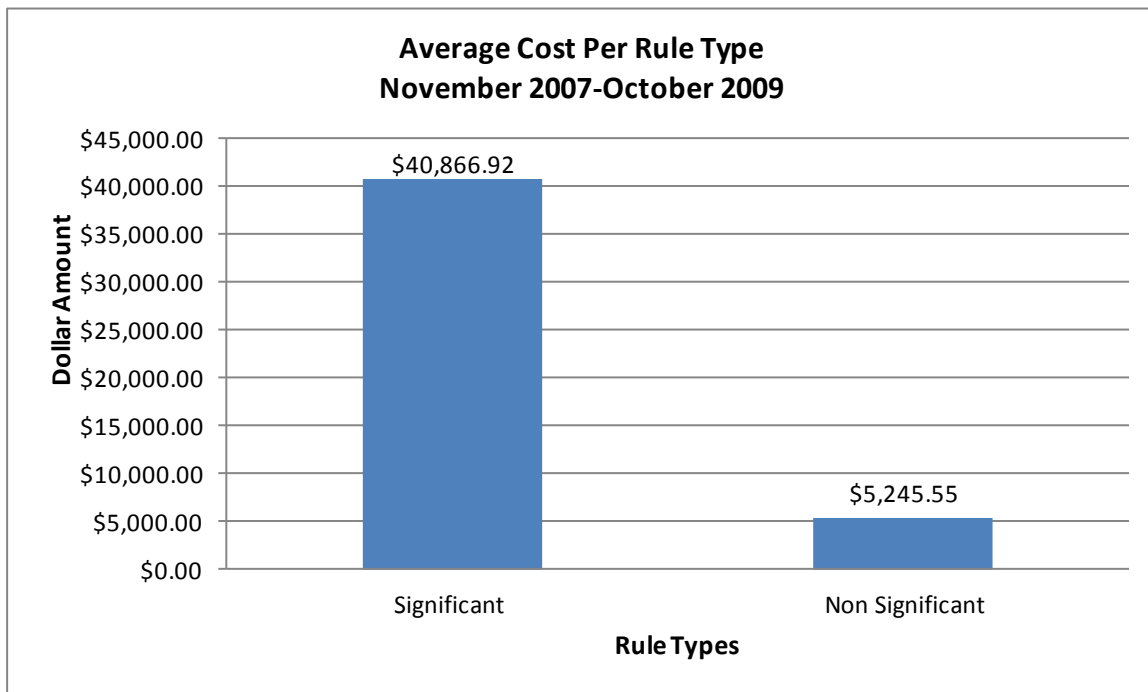
### **Costs of Developing and Adopting Significant Legislative Rules**

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 \$1,675,544 to develop the 41 significant legislative rules adopted from January 1, 2010 through December 31, 2011, compared with total costs of \$267,523 to adopt 61 "non-significant" rules during the same period. The average cost per rule was \$40,867 for significant rules, compared to \$5,246 per rule for non-significant rules. Figures 1 and 2 illustrate these cost differences. This is an increase from the previous reporting period where the average cost for significant rules was \$36,502 and for non-significant rules it was \$3,707.

**Figure 1. Total Cost of Adopting Significant Rules Compared to Non-Significant Rules from January 1, 2010 through December 31, 2011**



**Figure 2. Average Cost of Adopting Significant Rules Compared to Non-Significant Rules from November 2009 through October 2011**



The most costly rule, totaling \$632,208, was the Large On-site Sewage System rules. The rules fulfill the 2007 statutory mandate to establish comprehensive regulation of large on-site sewage systems (LOSS) under the Department of Health, and are intended to protect public health by preventing human contact with untreated sewage. The legislation expanded LOSS to include wastewater systems with a design flow of 3,500 gallons per day (gpd) to 100,000 gpd and transferred permitting responsibilities for systems with a design flow of 14,500 gpd to 100,000gpd from the Department of Ecology to the Department of Health. The rules consolidated existing requirements from the Department of Health and the Department of Ecology for LOSS and set LOSS environmental review requirements and standards.

The subject matter of this rule required updating existing language and updating very technical guidance and adding it to the rule. This involved a number of staff members with expertise in specific topics. That increased costs for staff salaries and benefits. Department of Health staff also spent an extensive amount of time for public and stakeholder involvement and outreach, which greatly increased the cost of this rule. A LOSS rule advisory committee and subcommittees were convened to provide recommendations on the rule development. In addition, Department of Health staff presented updates at regional meetings of the Pacific Northwest International Section of the Air and Waste Management Association and at Washington On-site Sewage Association (WOSSA) conferences. Articles were also written for WOSSA’s newsletter.



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

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

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

## **Legal Actions**

There have been no legal actions alleging that the Department of Health, 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.

## **Adverse Effects of Compliance with the Regulation**

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

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

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

For example, amending a rule to eliminate an obsolete requirement for obtaining a health professional license qualifies the amendment as significant. The rule change may not create a cost to the regulated profession – sometimes a cost savings occurs – and the rule may have widespread support from the regulated profession. Yet RCW 34.05.328

requires that a cost-benefit analysis and other documentation be prepared before the rule is proposed, resulting in efforts, cost, and delay that are often perceived as unnecessary.

Other significant legislative rules require more complex analysis. The complexity may reflect the difficulty of obtaining data that sufficiently support the standard in the rule. Examples of data that are often difficult to obtain include the degree to which a standard is intended to alter public behavior, or the public health risk or benefit associated with a certain standard, such as requiring that prescriptions be filled in a timely manner for optimum efficacy. Data collection is a major component of a cost-benefit analysis. If data 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.

### **Rule acceptability and Stakeholder Comments**

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

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



**STATE OF WASHINGTON**  
**DEPARTMENT OF LABOR AND INDUSTRIES**  
*Legislative and Governmental Affairs Office PO Box 44001 • Olympia, Washington 98504-4001*

**MEMORANDUM**

December 16, 2011

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

FROM: Tamara Jones, Assistant Director for Legislative and Government Affairs *TJ*  
Department of Labor and Industries

SUBJECT: Significant Legislative Rules Report

Pursuant to RCW 34.05.328, the enclosed report covers the Department of Labor and Industries' significant legislative rulemaking activities for the period January 1, 2010, through December 31, 2011.

Please contact me at (360) 902-6805 if you have any questions.

**Department of Labor and Industries  
Significant Legislative Rules Report  
January 1, 2010 – December 31, 2011**

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**Number of significant legislative rules proposed between January 1, 2010, and December 31, 2011:**

The Department of Labor and Industries (L&I) proposed nine significant legislative rules between January 1, 2010, and December 31, 2011. This included proposed amendments to 47 WAC sections, the proposed creation of 49 WAC sections, and no proposed WAC repeals.

Rule Topic	Number of Sections		
	Proposed to Amend	Proposed to Create	Proposed to Repeal
Travel Expense	1	0	0
Leave for Domestic Violence Victims	0	22	0
Explosives	1	0	0
Apprenticeship – Apprentice Utilization	39	3	0
Apprenticeship – Penalties	1	0	0
Abatement	4	1	0
Hazardous Drugs	0	13	0
Self-Insurance Continuing Education Credits	1	0	0
Medical Provider Network & Expansion of Centers for Occupational Health and Education (COHEs)	0	10	0
<b>Total</b>	<b>47</b>	<b>49</b>	<b>0</b>

**Number of significant legislative rules adopted between January 1, 2010, and December 31, 2011:**

L&I adopted six significant legislative rules between January 1, 2010, and December 31, 2011. This included amendments to 42 WAC sections, the creation of 33 WAC sections, and no WAC repeals.

Rule Topic	Number of Sections		
	Amended	Created	Repealed
Vocational Services – Option 2 Benefits	0	8	0
Leave for Domestic Violence Victims	0	22	0
Travel Expense	1	0	0
Explosives	1	0	0
Apprenticeship – Apprentice Utilization	39	3	0
Apprenticeship – Penalties	1	0	0
<b>Total</b>	<b>42</b>	<b>33</b>	<b>0</b>

## **Description of each rule adopted:**

### **1. Vocational Services – Option 2 Benefits, adopted March 12, 2010, WSR 10-07-054**

This rulemaking provided details concerning Option 2 benefits for injured workers under Washington's vocational rehabilitation provisions. Option 2 was passed as part of legislation adopted in 2007 (Engrossed Substitute Senate Bill 5920) intended to improve return-to-work outcomes for workers, reduce repeat referrals for vocational services, and increase accountability and responsibility. Option 2 training benefits allow eligible workers the option of accessing a vocational award and training benefits after claim closure in lieu of choosing to follow the training plan developed with a vocational rehabilitation counselor.

### **2. Leave for Domestic Violence Victims, adopted July 6, 2010, WSR 10-14-099**

This rulemaking was a result of Substitute House Bill 2602 (Chapter 286, Laws of 2008), which requires employers to provide employees with reasonable or intermittent leave from work upon advance notice, except in emergencies, for specified activities if the employee or family member is a victim of domestic violence, sexual assault, or stalking. Leave can be used for seeking or obtaining legal or law enforcement assistance, medical treatment, social services, counseling, or for safety planning or relocation. Employers are prohibited from discriminating against employees who exercise rights protected by this legislation. Administrative and civil causes of action for violation of the provisions of the legislation were created. Rules were needed to administer and enforce SHB 2602.

### **3. Travel Expense, adopted July 20, 2010, WSR 10-15-105**

This rulemaking updated department policy regarding injured workers traveling out of his/her immediate residential area to the nearest point of adequate treatment or other services, including vocational retraining. The effects are to ensure a payment methodology that is reasonable, fair, and cost efficient.

### **4. Explosives, adopted December 20, 2010, WSR 11-01-124**

This rulemaking requires those who store explosives to notify their local fire safety authority every year. Before the effective date of this rule, notification was required on the first day that the explosive materials were stored. Notification to the local fire safety authority was not required until the explosives were moved. This rule made notification an annual event. Prior to this change, explosives could be left in one location for years and only one notification to local fire safety authorities was required.

### **5. Apprenticeship – Apprentice Utilization, adopted May 4, 2011, WSR 11-11-002**

On December 29, 2008, the U.S. Department of Labor for the Apprenticeship Programs, Labor Standards for Registration, published the final rules to 29 CFR Part 29. To comply with the new federal rules, the Washington State rules needed change. These changes were prepared by L&I in collaboration with a subcommittee of the Washington State Apprenticeship and Training Council (WSATC). In addition, the rulemaking reviewed Initiative 937, which established an incentive to utilize state-registered apprentices when entities construct/build renewable energy projects. The WSATC, under I-937, is tasked with setting the level of apprentice utilization for such projects and verifying that such levels are achieved through a review process. With the growing emphasis on renewable

energy resources, the rules were amended to outline the processes and procedures through which entities can obtain certification of apprentice utilization.

**6. Apprenticeship – Penalties, adopted November 22, 2011, WSR 11-23-138**

Engrossed Substitute Senate Bill 5873 (Chapter 197, Laws of 2009) requires the Apprenticeship Program to adopt rules regarding penalties for contractors found to be working apprentices out of ratio, with inappropriate supervision, or outside their work process scope of the approved Apprenticeship Program standards. Contractors who are found out of compliance in any of these areas by the Washington State Apprenticeship and Training Council (WSATC) may have their responsible bidder status revoked for the first violation and be barred from bidding on any public works contract for five years upon the second violation.

**The costs incurred in complying with this section:**

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

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

Not applicable.

**The extent to which this section has adversely affected the capacity to fulfill our legislatively prescribed mission:**

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

**The extent to which this section has improved the acceptability of state rules to those regulated:**

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

**Any other information considered by the Office of Financial Management to be useful in evaluating the effect of this section.**

None.

January 17, 2012

MEMORANDUM

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

FROM: Pamela Krueger, Environmental & Legal Affairs Section Manager

SUBJECT: Significant Rulemaking Report for 2010-2011

The following information is provided by the Department of Natural Resources for the 2010-2011 Significant Rule-Making Report, consistent with RCW 34.05.328(6).

**Rules adopted per CR103:**

**1. Burn permit fee increased**

- Legislature amended RCW regarding increased burn permit fees. The WAC amendment is consistent with the RCW amendment. The amendment to WAC 332-24-221 provides increased DNR revenue in order to more adequately finance the costs involved in managing the burn permit program.
- Compliance with RCW 34.05.328(6) did not affect the rule adoption process.
- There were no costs incurred in complying with RCW 34.05.328(6).  
The costs incurred were staff time in preparing the documentation which included the small business impact analysis and in conducting the two hearings. DNR held two hearings, one in Olympia and one in Colville.
- There has been no legal action associate with this WAC amendment.
- Implementation of the burn permit fee increases significantly decreases the costs to DNR of managing the statewide burn permit program.

**2. Monumentation and Corner Restoration forms changed**

- Amendments to WACs 332-120-070 and 332-130-070 remove specific outdated forms from the RCWs (58.24.030, 24.040, 09.050 and 17.160) and allows DNR to require that counties use more accurate updated forms when submitting data.
- Compliance with RCW 34.05.328(6) did not affect the rule adoption process.
- There were no costs incurred in complying with RCW 34.05.328(6).

Faith Lumsden, Director of the Governor's Regulatory Assistance

January 17, 2012

Page Two

**Monumentation and Corner Restoration forms changed (cont)**

- There has been no legal action associated with these WAC amendments.
- Adoption of the WAC amendments allows the Survey Program to require more accurate forms.

Please contact Peggy Murphy, Acting Rules Coordinator, at 902-1393 if you have questions.



January 6, 2012

**TO:** Shelby Hultman  
Governor's Office of Regulatory Assistance

**FROM:** Brad Flaherty, Deputy Director  
Department of Revenue

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

**1. Number of Significant Legislative Rules for the Period of January 1, 2010-December 31, 2011**

Total number of adopted rules (CR103) during this period: One rule, which was amended 4 times as required by statute

Total number of proposed rules (CR102) not adopted during this period: One rule

**2. Title or Description for Each Rule**

**Rules adopted (CR103s)**

As required by statute, the Department of Revenue (Department) 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.

**Rules proposed (CR102s)**

The Department has proposed one additional rule that we consider a significant legislative rule. This rule is WAC 308-300-160 Business Licensing Service – Total fee payable – Handling of fees, which upon adoption will be recodified as WAC 458-20-10101 (Rule 10101).

SB 2017 (Chapter 298, Laws of 2011) transferred responsibility for the master license service program and its rules from the Department of Licensing to the Department of Revenue. The legislation requires that the application and renewal handling fees for this program be established by rule. (This program is now referred to as the business licensing service.) The Department's proposed rule retains the same fee structure as that previously charged by the Department of Licensing.

**3. Whether Compliance with this Section Affects the Substance of Adopted Rules**

Compliance with the significant legislative rule-making requirements has not affected the substance of Rule 660. The Department has established a good working relationship with the affected industry members, and engages in dialogue and information sharing throughout the rule-making process.

**4. Additional Costs Associated with Significant Legislative Rule-making 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.

The additional costs of preparing the information required under ESHB 1010 for the proposed Rule 10101 were likewise minimal.

**5. Description of Any Legal Actions**

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

**6. 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.

**7. Rule Acceptability**

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

**8. Other Relevant Information**

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 pre-proposal stage to adoption, and the use of the Internet to make this information available to any person.

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

**Department of Social and Health Services  
Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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.

Also not legally required, the DSHS process generally includes having permanent Rule Making Orders on all significant legislative rules signed by the DSHS Secretary, and review of these rules by an Assistant Attorney General before submission to the Secretary for approval and signature.

The department completed 28 permanent rule making actions that were considered significant legislative rules January 1, 2010 through December 31, 2012.

Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA

**\*\*NOTE: MPA/HRSA is no longer part of DSHS and is now Health Care Authority.  
This action was taken while still part of DSHS\*\***

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

**Subject Matter:**

Telemedicine

Adopted Chapter 388-551 WAC as WSR 10-10-087 # of sections 12

Months to complete this rule-making: 8

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

Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA

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**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

<p><b>Subject Matter:</b></p> <p>National correct coding initiative</p> <p>Adopted WAC 388-550-705 as WSR 10-08-023      # of sections 3</p> <p>Months to complete this rule-making: 4</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>

Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA

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This action was taken while still part of DSHS \*\***

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

<p><b>Subject Matter:</b></p> <p>Billing a client</p> <p>Adopted WAC 388-502-0160 as WSR 10-10-022      # of sections 1</p> <p>Months to complete this rule-making: 28</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>

Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA

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**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

**Subject Matter:**

Estate recovery

Adopted Chapter 388-527 WAC as WSR 10-08-110 # of sections 7

Months to complete this rule-making: 6.

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

Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA

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**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

**Subject Matter:**

Certified Public Expenditure payment program

Adopted Chapter 388-550 WAC as WSR 10-11-032 # of sections 3

Months to complete this rule-making: 15

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



Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA

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This action was taken while still part of DSHS \*\***

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

**Subject Matter:**

Infant Case Management

Adopted Chapter 388-533 WAC as WSR 10-12-010 # of sections 7

Months to complete this rule-making: 15

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

Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA

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**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

**Subject Matter:**

Electric Neural Stimulation Devices

Adopted Chapter 388-543 WAC as WSR 10-13-167 # of sections 6

Months to complete this rule-making: 6

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

**Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA**

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**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

<p><b>Subject Matter:</b></p> <p>Trauma payments</p> <p>Adopted Chapters 388-531 &amp; 546 WAC as WSR 10-12-013 # of sections 3</p> <p>Months to complete this rule-making: 5</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>

Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA

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**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

<p><b>Subject Matter:</b></p> <p>Mental Health Division rules</p> <p>Adopted Chapter 388-865 WAC as WSR 10-09-061 # of sections 3</p> <p>Months to complete this rule-making: 26</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>

**Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA**

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**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

<p><b>Subject Matter:</b></p> <p>Estimated acquisition cost</p> <p>Adopted WAC 388-530-800 as WSR 10-24-021      # of sections 1</p> <p>Months to complete this rule-making: 4</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>

Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA

**\*\*NOTE: MPA/HRSA is no longer part of DSHS and is now Health Care Authority.  
This action was taken while still part of DSHS \*\***

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

**Subject Matter:**

Coverage criteria for hysteroscopic sterilizations; and requirements for who can perform and be paid for this procedure

Adopted WAC 388-531-1550 as WSR 10-24-071 # of sections 1

Months to complete this rule-making: 5

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

**Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA**

**\*\*NOTE: MPA/HRSA is no longer part of DSHS and is now Health Care Authority.  
This action was taken while still part of DSHS \*\***

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

**Subject Matter:**

Provider enrollment, eligibility and general requirements

Adopted Chapter 388-502 WAC as WSR 11-11-017 # of sections 14

Months to complete this rule-making: 27

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

Department of Social and Health Services  
Medicaid Purchasing Administration  
HRSA

**\*\*NOTE: MPA/HRSA is no longer part of DSHS and is now Health Care Authority.  
This action was taken while still part of DSHS \*\***

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

<p><b>Subject Matter:</b></p> <p>Hearing Aides</p> <p>Adopted Chapter 388-547 WAC as WSR 11-11-015 # of sections 7</p> <p>Months to complete this rule-making: 8</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>



Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA

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This action was taken while still part of DSHS \*\***

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

<p><b>Subject Matter:</b></p> <p>Medical definitions</p> <p>Adopted Chapter 388-500 WAC as WSR 11-14-0530 # of sections 19</p> <p>Months to complete this rule-making: 20</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>

**Department of Social and Health Services**  
**Medicaid Purchasing Administration/**  
**HRSA**

**\*\*NOTE: MPA/HRSA is no longer part of DSHS and is now Health Care Authority.**  
**This action was taken while still part of DSHS \*\***

**Significant Legislative Rules Adopted**  
**January 1, 2010 through December 31, 2011**

**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 analysis 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:**

<p><b>Subject Matter:</b></p> <p>Vision care</p> <p>Adopted Chapter 388-544 WAC as WSR 11-11-016 # of sections 9</p> <p>Months to complete this rule-making: 7</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>

Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA

**\*\*NOTE: MPA/HRSA is no longer part of DSHS and is now Health Care Authority.  
This action was taken while still part of DSHS \*\***

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

**Subject Matter:**

Durable medical equipment

Adopted Chapter 388-543 WAC as WSR 11-14-052 # of sections 49

Months to complete this rule-making: 35

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

**Department of Social and Health Services  
Administration  
Division**

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This action was taken while still part of DSHS \*\***

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

<p><b>Subject Matter:</b></p> <p>Electronic Health Records</p> <p>Adopted WAC 388-502-0025 as WSR 11-13-053      # of sections 1</p> <p>Months to complete this rule-making: 5</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>

**Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA**

**\*\*NOTE: MPA/HRSA is no longer part of DSHS and is now Health Care Authority.  
This action was taken while still part of DSHS \*\***

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

<p><b>Subject Matter:</b></p> <p>Non-emergent medical transport</p> <p>Adopted Chapter 388-546 WAC as WSR 11-15-029 # of sections 14</p> <p>Months to complete this rule-making: 29</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>

Department of Social and Health Services  
Medicaid Purchasing Administration/  
HRSA

**\*\*NOTE: MPA/HRSA is no longer part of DSHS and is now Health Care Authority.  
This action was taken while still part of DSHS \*\***

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

**Subject Matter:**

Physician related services

Adopted Chapter 388-531 WAC as WSR 11-14-055 # of sections 9

Months to complete this rule-making: 8

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

Department of Social and Health Services  
Medicaid Purchasing Administration  
HRSA

**\*\*NOTE: MPA/HRSA is no longer part of DSHS and is now Health Care Authority.  
This action was taken while still part of DSHS \*\***

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

**Subject Matter:**

Healthcare services

Adopted Chapter 388-501 WAC as WSR 11-14-054 # of sections 2

Months to complete this rule-making: 5

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

**Department of Social and Health Services  
Aging and Disability Services Administration  
Division of Behavioral Health & Rehabilitation**

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

<p><b>Subject Matter:</b></p> <p>Gambling treatment programs</p> <p>Adopted Chapter 388-816 WAC as WSR 11-02-003 # of sections 33</p> <p>Months to complete this rule-making: 9</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>



**Department of Social and Health Services  
Aging and Disability Services Administration  
Division of Developmental Disabilities**

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

<p><b>Subject Matter:</b></p> <p>DDD Assessments</p> <p>Adopted Chapter 388-828 WAC as WSR 11-13-039 # of sections 17</p> <p>Months to complete this rule-making: 8</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>

**Department of Social and Health Services  
Aging and Disability Services Administration  
Home and Community Services Division**

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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 analysis 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:**

<p><b>Subject Matter:</b></p> <p>Long Term Care</p> <p>Adopted Chapter 388-106 WAC as WSR 10-08-074 # of sections 7</p> <p>Months to complete this rule-making: 10</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>

**Department of Social and Health Services  
Aging and Disability Services Administration  
Residential Care Services**

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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.

- 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><b>Subject Matter:</b></p> <p>Boarding homes</p> <p>Adopted Chapter 388-78A WAC as WSR 10-16-085 # of sections 19</p> <p>Months to complete this rule-making: 5</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>

**Department of Social and Health Services  
Aging and Disability Services Administration  
Residential Care Services**

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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.

- 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><b>Subject Matter:</b></p> <p>Adult family homes</p> <p>Adopted Chapter 388-76 WAC as WSR 10-14-058    # of sections 5</p> <p>Months to complete this rule-making: 4</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>

**Department of Social and Health Services  
Aging and Disability Services Administration  
Residential Care Services**

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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.

- 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:**

**Subject Matter:**

Certified community residential services and support

Adopted Chapter 388-101 WAC as WSR 10-16-084 # of sections 9

Months to complete this rule-making: 5

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

**Department of Social and Health Services  
Aging and Disability Services Administration  
Residential Care Services**

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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.

- 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><b>Subject Matter:</b></p> <p>Adult family homes</p> <p>Adopted Chapter 388-76 WAC as WSR 10-16-082    # of sections 16</p> <p>Months to complete this rule-making: 5</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>

**Department of Social and Health Services  
Aging and Disability Services Administration  
Residential Care Services**

**Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011**

**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.

- 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><b>Subject Matter:</b></p> <p>Nursing home rules</p> <p>Adopted Chapter 388-97 WAC as WSR 11-22-077 # of sections 8</p> <p>Months to complete this rule-making: 4.5</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>

Department of Social and Health Services  
Children's Administration

Significant Legislative Rules Adopted  
January 1, 2010 through December 31, 2011

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 analysis 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:

**Subject Matter:**

Shelters for Victims of Domestic Violence

Adopted Chapter 388-551 WAC as WSR 10-22-040 # of sections 86

Months to complete this rule-making: 31

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



# EMPLOYMENT SECURITY DEPARTMENT SIGNIFICANT LEGISLATIVE RULES REPORT

## 1. Number of CR 102s and CR 103s submitted from January 1, 2010 through December 31, 2011

*CR 102s filed – 3; CR103s filed – 3.* One filing represented a single rule section related to delinquent employer taxes. The other two filings reflected a general update of 18 unemployment insurance (UI) tax rule sections and 8 UI benefit rule sections.

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

### UI BENEFIT RULES

CR102 filed March 1, 2010, CR103 filed May 12, 2010

- WAC 192-180-013 - Defined a partially unemployed worker as an individual whose hours have been cut by no more than sixty percent.
- WAC 192-180-015 - Specified the manner in which job search contacts that are not made in-person are to be documented.
- WAC 192-200-030 - Provided that, for purposes of participation in training, the training facility will define whether the training is full-time, subject to the department's discretion.
- WAC 192-110-150 - Provided that an individual with power of attorney may not apply, certify, or testify in lieu of the claimant on matters related to unemployment insurance benefits.
- WAC 192-170 -080 - Updated the policy related to leaves of absence.
- WAC 192-170-090 - Specified how eligibility for benefits will be determined for claimants who are or have been incarcerated.
- WAC 192-210-001 - Clarified those educational institutions that are subject to RCW 50.44.050 (denials for school breaks during academic break periods).
- WAC 192-210-045 - Clarified how reasonable assurance for an individual who is employed by more than one school will be determined.

### UI TAX RULES

CR102 filed October 6, 2010, CR103 filed November 12, 2010

- WAC 192-300-090 - Clarified procedures for employers who become inactive or reactivate and how this impacts coverage of corporate officers.
- WAC 192-300-100 - Clarified that the family exception for "corporate" farms also covers other legal entities.
- WAC 192-300-190 - Clarified that business owners are not covered for unemployment insurance.
- WAC 192-310-010 - Added a provision for domestic partners that was missed earlier and updates references to tax-filing systems.
- WAC 192-310-025 - Updated the priority list for how payments are applied, including adding charges for NSF checks.

# EMPLOYMENT SECURITY DEPARTMENT SIGNIFICANT LEGISLATIVE RULES REPORT

- WAC 192-310-025 – Added a \$25 charge for NSF checks.
- WAC 192-310-040 - Clarified provisions for reporting on-call and standby hours.
- WAC 192-310-050 - Clarified what records employers must keep, including specifying business and financial records. (Updated implementation of Ch. 432, Laws of 2009 [SHB 1555]).
- WAC 192-310-055 - Separated out current requirements for certain farm records.
- WAC 192-310-160 - Allowed employers who become active 30 days to request exemption of corporate officers.
- WAC 192-310-190 - Clarified percentage of ownership requirements for corporate officers who are unemployed.
- WAC 192-320-070 - Added a provision for domestic partners that was missed earlier and conforms domestic violence and apprenticeship provisions with statute.
- WAC 192-320-085 - Specified the quarter when an overpayment of benefits is credited.
- WAC 192-350-010 – Clarified predecessor-successor provisions.
- WAC 192-350-070 - Modified the application of rates in predecessor-successor transitions effective on a January 1.
- WAC 192-350-090 - Clarified when an employer quits for purposes of successor liability.

CR102 filed October 6, 2010, CR103 filed November 12, 2010

- WAC 192-320-036 – Implemented statute restructuring UI tax rates for employers delinquent in paying taxes or filing reports

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

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

### **4. Costs of complying with the requirements.**

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

# EMPLOYMENT SECURITY DEPARTMENT SIGNIFICANT LEGISLATIVE RULES REPORT

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

None.

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

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

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


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

**STATE OF WASHINGTON  
FOREST PRACTICES BOARD**

**PO Box 47012  
Olympia, WA 98504-7012**

December 15, 2011

MEMORANDUM

TO: Faith Lumsden, Director of the Governor’s Regulatory Assistance  
 FROM: Bridget Moran, Chair   
 SUBJECT: Significant Legislative Rule Making Report for 2010-2011

The following summary is provided for the 2012 Significant Legislative Rule Making Report as described in RCW 34.05.328 (6).

a. A list of the rules.

Title and Description of Rule Making	# of CR-102’s	# of CR-103	# of WAC Sections
<b>Northern Spotted Owl</b> <ul style="list-style-type: none"> <li>Established a three-member multi-stakeholder “spotted owl conservation advisory group” to evaluate, along with Washington Department of Fish and Wildlife landowner surveys that indicate the absence of spotted owls at Northern Spotted Owl site centers.</li> </ul>	1	1	2
<b>Forest Biomass , Riparian Open Space Program, Watershed Analysis</b> <ul style="list-style-type: none"> <li>Added forest biomass harvest in the definition of “forest practice.”</li> <li>Implemented Substitute Senate Bill 5401 (2009 session) relating to the Riparian Open Space Program.</li> <li>Ensures that watershed analysis prescriptions continue over time to be protective enough to warrant an exemption from Class IV-special classification.</li> </ul>	1	1	22
<b>Extension of RMAP Performance Period</b> <ul style="list-style-type: none"> <li>Provided forest landowners the opportunity to extend the performance period for road maintenance and abandonment plans (RMAPs) up to five years, until 2021.</li> </ul>	1	1	2

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

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 rules 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 **2012** Significant Legislative Rules Report

## Executive Summary

The Office of the Insurance Commissioner submits this report to assist the Office of Regulatory Affairs in preparing the 2012 report required by RCW 34.05.328(6). We submitted our last report in 2010. We have adopted 22 rules between January 1, 2010 and December 31, 2011 that we determined are “significant legislative rules.” The significant legislative rule requirements add approximately \$200,000 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.

Proposed	Adopted	Name of Rule	New (section)	Amended (section)	Repealed(section)
	1	Carrier health Plan Disclosure		1	
	1	Guaranteed Asset Protection	9		
	1	Standards for Education of Licensees Soliciting Long-Term Care Contracts			1
	1	Electronic Signatures			1
	1	Life Settlements	5	6	
	1	Personal Injury Protection	1		
	1	Juvenile Life Insurance		2	
	1	Insurers Doing Business in Legal Name	1		
	1	Title Insurance Rate and filing	16		

Authors: Meg Jones, Jim Keogh, Kacy Scott  
Office of the Insurance Commissioner



# Office of the Insurance Commissioner Significant Legislative Rules Report

2012

Proposed	Adopted	Name of Rule	New (section)	Amended (section)	Repealed(section)
		Statistical Reporting			
	1	Domestic Insurers Business Continuity Plan	2		
	1	Utilization Review of Medical Services		1	
	1	Insurers Doing Business in Legal Name		1	
	1	Producer on-line licensing rules		17	1
	1	Association Health Plans Data Reporting	11		
	1	Crop Adjuster	4		
	1	Subrogation Demands		1	
	1	Guaranteed Issue Enrollment for Persons under age 19	4		
	1	Title Insurers Rate Filing		1	
	1	Coordination of Benefits in Medical Services		1	
	1	Long-Term Care Partnership	6	1	
	1	Life Settlement Providers		1	
	1	Biographical Affidavits	3		
1		Unfair Practices with Respect to Vehicle Insurance		1	
1		Unauthorized Insurers – Surplus Lines	2	3	1
2	22				

Authors: Meg Jones, Jim Keogh, Kacy Scott  
Office of the Insurance Commissioner



The Commissioner’s approach to rule making does not change the scope or content of proposed rules based on the Administrative Procedures Act requirements to perform a cost benefit analysis for significant legislative rules. We draft the rules, perform the analysis of whether the proposed rule meets the significant legislative rule criteria, and then draft the cost-benefit analysis. We do not perform cost benefit analysis for those proposed rules falling under one of the exceptions in RCW 34.05.328(5)(b).

**Costs Incurred to Comply**

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

Analyst effort:	1.5 FTE	approximately \$165,000 annually
List serve and website maintenance:	.4 FTE	approximately \$35,000 annually

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

Mailing costs increased after the adoption of RCW 34.05.328. However, we reduced costs beginning in 2011 by:

- Eliminating U.S. mailing of rule filings and using electronic distribution through our list-serve and email to regulated industry.

**Legal Actions Based on Failure to Comply with RCW 34.05.328**

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

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

1. *Increased Time to Complete Rule Development and Adoption:* In order to comply with RCW 34.05.328, the staff working on rules spend approximately 25% more time than they otherwise would when developing rules. While the analysis called for by the statute is common to good rule and policy analysis, and





normally is part of any rule development, the statute's documentation and communication requirements require additional time.

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

2. *Reduced Ability to Respond to Changing Circumstances* Because rule making takes longer to complete in order to ensure compliance with RCW 34.05.328, the agency must use emergency rules followed by permanent rule making to quickly address or respond to issues. This has the potential to create more confusion for the public, as they must comply with an emergency rule and then change or adapt again once the permanent rule is in place. Even where there is agreement on the rule amongst stakeholders and the agency, the processes take longer to complete.
3. *Limits on Number of Rules under Development* We limit our analysts to a docket of five active rules, and as a result have a backlog of pending rule development requests. This limit arises from the need to include the economic policy analyst in all rule development in order to ensure compliance with RCW 34.05.328.

### **Assessment of Improvement in the “Acceptance” of State Rules by Those Regulated Because of Statutory Compliance**

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

- the legislature creates new programs requiring implementation and interpretation, and
- the regulated industry regularly experiences multiple changes that require amendments to existing rules.

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



# Office of the Insurance Commissioner **2012**

## Significant Legislative Rules Report

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

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

However, performing cost benefit analysis that meets the generally accepted economic analysis standards set out in the statute requires access to an 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 relevant and most reliable data to support our initial assessment of rule proposals, so that rules reflect what we learn from the data. This supports the agency mission because the Commissioner regulates to both protect consumers and ensure a financially sound insurance marketplace in Washington.

## **STAFF CONTACT**

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