



# Impacts of Significant Legislative Rulemaking

(RCW 34.05.328)

*2014-2015*

**Questions or Comments:**

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## Introduction

[RCW 34.05.328](#) defines significant legislative rules (SLR) as those 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.

The law requires 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.

[RCW 34.05.328\(6\)](#) requires the Office of Regulatory Assistance, recently renamed the Office for Regulatory Innovation and Assistance (ORIA), to report on the experience of the named regulatory agencies in carrying out these rulemaking requirements. ORIA coordinated the gathering of information with agencies to prepare this report. ORIA 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 to obtain stakeholder input.

Agencies required to report include:

- Department of Ecology (ECY),
- Department of Fish and Wildlife (DFW),
- Department of Health (DOH),
- Department of Labor & 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).

ORIA and agencies collaborated on a new Interactive Reporting Tool (IRT), improving reporting efficiency and effectiveness. The IRT allowed agencies to enter individual SLRs throughout the two-year reporting period. Stakeholders may enter comments once the agency completes a rulemaking report. ORIA received information from all agencies for this report; ESD reported no adoption of significant legislative rules and, therefore, no impacts over the last two years.

This report explains the agencies' experiences with significant legislative rulemaking for calendar years 2014 through 2015. The information reported addresses requirements as set forth by [RCW 34.05.328\(6\)](#), specifically:

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

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

This reporting period follows a moratorium on rulemaking. Executive Order 10-06, November 17, 2010, suspended all non-critical rule development and adoption through December 31, 2012. Executive order 11-03, October 11, 2011 extended the moratorium to January 1, 2013. During this period, agencies could not work on non-critical rules.

For this reporting period, agencies completed 97 rule adoptions affecting 107 chapters of the Washington Administrative Code (WAC) under the significant legislative rulemaking requirements from 2014 through 2015. Topic areas for these rules varied. The table below summarizes the number of adopted rules and affected WAC chapters per agency. See the individual agency reports in the [appendix](#) for more information.

Agency Name	Number of Adopted Rules	Number of WAC Chapters Affected
Department of Ecology	8	11
Department of Fish and Wildlife	1	1
Department of Health	36	28
<i>Department of Health</i>	<i>34</i>	<i>28</i>
<i>State Board of Health</i>	<i>2</i>	<i>2</i>
Department of Labor and Industries	11	23
Department of Natural Resources	2	2
Department of Revenue	1	1
Department of Social and Health Services	12	20
Employment Security Department	0	0
Forest Practices Board	2	6
Office of the Insurance Commissioner	24	15
<b>Total</b>	<b>97</b>	<b>107</b>

### Department of Ecology

Eight significant legislative rulemakings adopted, affecting eleven WAC chapters. Examples include:

- Air Quality: Reporting of Emissions of Greenhouse Gases
- Hazardous Waste and Toxics Reduction: Dangerous Waste Regulations
- Shorelands and Environmental Assistance: State Environmental Policy Act (SEPA)
- Water Resources: Water Resources Management Program for the Spokane River and Spokane Valley Rathdrum Prairie

#### Reported:

Ecology continues to find compliance with this section valuable to the rulemaking process. RCW 34.05.328 (1) requires Ecology make several determinations related to the rulemaking prior to adoption. RCW 34.05.328 (2) requires agencies to place in the rulemaking file “documentation of sufficient quantity and quality” to support the determinations. Gathering and considering

information for these requirements, along with relevant science and input from interested parties, ensures an enhanced decision-making process.

The information Ecology prepares during rulemaking is intended to inform and document the process and to communicate information with interested parties. We have developed a standardized structure for the presentation of this information (for example the Cost-Benefit and Least Burdensome Alternatives Analyses and the Implementation Plan). These documents assist in establishing a framework for conversations with interested parties about the subject of the proposed rule. More recently, the economic analyses have become a focal point of conversations related to the impacts of a proposed rule or change. Further, information gathered to support the determinations in section 328 help Ecology to be prepared to answer questions about what the rulemaking will do, its impacts, and why it is needed. Specific comments received from interested parties help Ecology understand the nature of their concerns and find ways to engage them in the process. These conversations, comments and discussion lead to the development of the initial proposal as well as changes that Ecology may incorporate into the final rule adoption.

## Department of Fish and Wildlife

One significant legislative rule adopted, affecting one WAC chapter. The rule addressed was:

- Hydraulics Code Rules Rewrite and Recodification

### **Reported:**

The former WAC 220-110 Hydraulic Code Rules was amended and re-codified as WAC 220-660. An extensive public outreach effort affected the substance of the rule amendment. Compliance with this RCW 34.05.328 did not affect the substance of this rule change.

## Department of Health

Thirty-four significant legislative rules adopted, affecting twenty-six WAC chapters. Examples include:

- Suicide Assessment, Treatment and Management Training Requirements
- Health Care Associated Infections Reporting
- Support for the Operation of the Women, Infants and Children Nutrition Program
- Temporary Worker Housing

### **State Board of Health**

Two significant legislative rules adopted, affecting two WAC chapters. The rules addressed were:

- Definitions (“assisted living facility” “elevated blood lead level” and “laboratory”)
- *Vibrio parahaemolyticus* Control Plan

### **The Department and Board both reported:**

Compliance with RCW 34.05.328 did not affect the substance of any of the rules adopted from January 1, 2014 through December 31, 2015.

## Department of Labor & Industries

Eleven significant legislative rules adopted, affecting twenty-three WAC chapters. Examples include:

- Self-Insurance Continuing Education
- Self-Insurance Penalties
- Hazardous Communication – Global Harmonization
- Factory Assembled Structures

**Reported:**

Compliance with this section did not affect the substance of the rule.

## Department of Natural Resources

Two significant legislative rules adopted, affecting two WAC chapters. The rules addressed were:

- Vessel Inspection Requirements for Ownership Transfer
- Geoduck Diver Safety Program

**Reported:**

Compliance with RCW 34.05.328 does not affect the substance of the rule.

## Department of Revenue

One significant legislative rule adopted, affecting one WAC chapter. The rule addressed was:

- Timber Excise Tax – Stumpage Value Tables

**Reported:**

Generally, compliance with this section does not affect the substance of the rules the Department adopts.

## Department of Social and Health Services

Twelve significant legislative rules adopted, affecting twenty WAC chapters. Examples include:

- Background Check Required for Developmental Disabilities Administration
- Consolidating the Secretary's List of Crimes and Negative Actions
- WAC Background Check Requirements
- Outpatient Mental Health Services

**Reported:**

N/A



## Employment Security Department

No significant legislative rules adopted.

## Forest Practices Board

Two significant legislative rules adopted, affecting six WAC chapters. The rules addressed were:

- Unstable Slopes Information in Forest Practices Applications
- Forest Practices Hydraulic Project and Forest Biomass

**Reported:**

None

## Office of the Insurance Commissioner

Twenty-four significant legislative rules adopted, affecting fifteen WAC chapters. Examples include:

- Charitable Gift Annuities Filings
- Health Insurance Provider Networks
- Title Insurance Rates
- Prior Authorization of Pharmacy Benefits

**Reported:**

The Commissioner built performing significant legislative rule analysis into our rulemaking 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 either the draft or final cost benefit analysis.

## Costs Incurred in Complying with Significant Rulemaking

Agencies commented that the requirements do add cost and time to the rulemaking process, as noted in previous reports. Costs are typically absorbed within normal operations. Some agencies tracked expenses in more detail. Costs reported by the agencies are listed below. Please see individual agency reports in the [appendix](#) for more information.

### Department of Ecology

Ecology does not track the costs associated with these requirements separately from other rulemaking activities (for example, public hearing costs or staff time to draft rule language or meet with interested parties). Costs associated with complying with this section include but are not limited to:

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

### Department of Fish and Wildlife

Hydraulics Code Rules Rewrite and Recodification estimated cost of compliance was \$66,337. Additional costs were incurred for an economist to prepare the cost/benefit analysis and small business economic impact statement and assist with preparing and carrying out an implementation plan.

WDFW issued a Programmatic Environmental Impact Statement (PEIS) on the proposed rule amendment. Many of the requirements in RCW 34.05.328(1) were incorporated into the PEIS. Since WDFW would have issued a PEIS and conducted staff and stakeholder training regardless of whether the rules were significant legislative rules, the cost of addressing these requirements is not included in the compliance cost.

### Department of Health

Significant legislative rules generally cost more to adopt than rules that are not significant. The cost to the department and the related health profession boards and commissions include staff and board and commission member time to develop the rule; preparation of cost-benefit analyses; public meetings (including workshops, rule drafting meetings, and formal hearings); some printing and postage; administrative costs; and, where appropriate, preparation of Small Business Economic Impact Statements or SBEIS. A large number of stakeholders or complex subject matter may require an increased number of stakeholder meetings, which also increases costs.

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

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

The most costly rule, totaling \$74,075, was adopted by the department to update existing standards for temporary worker housing. The adopted rules align federal and state standards and adopt in rule current state policies for the temporary worker housing program. The rules increase agency program efficiencies, improve enforcement capabilities, decrease on-site survey (inspection) frequencies while maintaining health and safety standards, and clarify many terms and conditions.

*The State Board of Health* expanded on the above observations and shared an example of costs and the affected businesses. The *Vibrio parahaemolyticus* (Vp) Control Plan rulemaking process cost about \$93,996. This rule was adopted by the board to better protect shellfish consumers from Vp-related illnesses. Washington's shellfish industry contributes over \$270 million towards the economy. The shellfish industry in Washington includes 349 licensees, including tribal, small and large companies operating in Puget Sound and in coastal areas.

The Board and the Department of Health's Office of Shellfish and Water Protection did extensive stakeholder work on this rule. The board and the department worked with an advisory committee made up of shellfish industry representatives to draft the proposed rule, considering a range of options to reduce *Vibrio parahaemolyticus*-associated illness.

## Department of Labor & Industries

Labor and Industries does not track the costs associated with these requirements.

## Office of the Insurance Commissioner

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

Analyst effort:	1.6 FTE	approximately \$180,000 annually
LISTSERV and Website maintenance:	0.5 FTE	approximately \$45,000 annually

Because the analysis is required on each rule, staff time for rulemaking 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 rulemaking is longer due to the additional steps.

By eliminating U.S. mailing of rule filings in 2011 and using electronic distribution through our list serve and email to regulated industry contacts and interested stakeholders, costs associated with mailings have been reduced to nearly zero. However, staff devoted to website maintenance has climbed as stakeholders have shown increased interest in stakeholder drafts (pre-CR102) and gaining more information regarding the comments of other stakeholders.

## **Department of Natural Resources**

Natural Resources costs associated with these requirements include staff time and other costs of doing business.

## **Department of Revenue**

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

## **Department of Social and Health Services**

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

## **Forest Practices Board**

Forest Practices Board costs were associated with staff time in planning and implementing the requirements under this section.

## Legal Actions

Three of the nine reporting agencies encountered legal action for alleged failure to comply with the requirements of [RCW 34.05.328](#). One challenge to a cost benefit analysis is not yet resolved. The second case involved a petition claiming that the rule did not follow the Administrative Procedures Act (APA) and that the included adaptive management did not identify a funding mechanism. The petition was denied but the agency thought it raised good points about the rule adoption process. The third case involves a challenge to statutory review and is not yet resolved. Six agencies indicated no legal actions resulted from their rulemaking.

## Department of Ecology

Between January 1, 2014 and December 31, 2015, there was one legal action against the agency challenging the cost-benefit analysis required under RCW 34.05.328. The case is related to Ecology's adoption of WAC 173-518 Water resources management program for the Dungeness portion of the Elwha-Dungeness water resources inventory area-WRIA 18, Adopted 11/16/12. The case is Bassett et al. v Ecology, Thurston County Superior Court No. 14-2-02466-2. Under the watershed planning act, RCW 90.82.080, instream flow rules do not constitute significant legislative rules under RCW 34.05.328 and do not require the preparation of a SBEIS; however, the agency can opt into regular rulemaking under the APA, and that is what Ecology opted to do in the Dungeness to better bolster the rule.

The case is ongoing so costs and results are not known at this time.

## Department of Fish and Wildlife

The only legal action was a petition under RCW 34.05.330 to repeal the rules. The petition was received by DFW on November 17, 2014. The petition stated, 'This rule is being adopted without following the administrative procedures act 34.05.328, thereby breaking RCW and places the Department out of compliance with legislative intent.' The petition also stated that the rule 'includes adaptive management, with no funding mechanism placing the taxpayers under obligation unknown.'

The Fish and Wildlife Commission heard the petition during its December 5, 2014, conference call. After reviewing the November 17, 2014, petition and hearing the Department's presentation on both of the issues brought forward, the Commission voted to deny the petition based on the fact that both concerns were addressed at the Commission meeting.

After the decision, Commissioner Schmitten recognized the petition had raised a good issue regarding the implementation plan. For this reason, the petition resulted in a better rule adoption process.

## Department of Labor & Industries

A petition for judicial review and declaratory judgement was filed on August 12, 2015, in Thurston County Superior Court challenging a provision in a rule adopted in 2012. According to the petition, the department exceeded its statutory authority in adopting rules for a statewide health care provider network in the workers' compensation system as required by 2011's Substitute Senate Bill 5801. Specifically, the petition challenges WAC 296-14-400, which states in part that reopening applications must be completed by network providers.

The case is ongoing so costs and results are not known at this time.

## Adverse Effects

Eight of the nine reporting agencies responded to the adverse effects element. Responses from several agencies indicated that [RCW 34.05.328](#) has had no impact or does not adversely affect the capacity of the agency to fulfill its legislatively prescribed mission. Generally, requirements are not thought to have significant adverse impact on the capacity of the responding agencies to fulfill legislatively prescribed missions. 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.

## Department of Ecology

The RCW 34.05.328 requirements do add cost and time to the rulemaking process; however, they promote analysis and deeper understanding of rule impacts. Environmental as well as jobs/business issues come up as part of rulemaking processes. The section 328 requirements help balance these issues in line with the agency's mission. In addition, the least burdensome alternatives analysis also considers Ecology's mission when examining the goals and objectives ensuring that the rules adopted are consistent with the agency's mission. This section supports Ecology's ability to fulfill its legislatively prescribed mission.

## Department of Fish and Wildlife

Compliance with this section did not adversely affect the capacity of DFW to fulfill our mission. This was a large rule amendment project that took over five years to complete. The majority of expense for the rule amendment was staff cost/time. The added staff cost/time needed to comply with this section was a small percentage of the overall amount. The cost of the economic analysis and carrying out the implementation plan were minimal.

## Department of Health

There are few adverse effects of significant legislative rulemaking other than the costs and the increased time to develop and adopt a significant rule. 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.

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.

Occasionally 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.

The State Board of Health responded that there are few adverse effects of significant legislative rulemaking other than the costs as identified above, and the increased time to develop and adopt a significant rule.

## **Office of the Insurance Commissioner**

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



## Rule Acceptability

Most agencies identified changes in the acceptability of agency rules resulting from the requirements of [RCW 34.05.328](#). Most agencies received positive feedback from their regulated communities.

### Department of Ecology

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

### Department of Fish and Wildlife

The lengthy but transparent rule update process improved the acceptability of rule amendment by the regulated community. Based on the feedback we received, both the cost/benefit analysis and small business economic impact statement the implementation plan were important to the regulated community. The economic analysis study, in particular, garnered feedback from the regulated community who wanted to ensure an accurate reflection of any increased costs. The conclusions of the cost/benefit analysis and small business economic impact statement helped reassure the regulated community that the rule amended would not significantly increase costs.

### Department of Health

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 Board of Health

The board 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 board's efforts to communicate with and include them in rule development. However, this has been true for both significant rules and non-significant rules.

Periodically 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.

## Department of Labor & Industries

There have been no detectable changes in acceptability of the agency's rules by the regulated community based solely on RCW 34.05.328. Stakeholder participation in the rule development process is a key component to the department's rulemaking process. When required, cost benefit analyses and small economic impact statements help to inform both the agency decision-making process and stakeholder comment.

## Department of Natural Resources

N/A

## Department of Revenue

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

## Department of Social and Health Services

N/A and "Unknown"

## Forest Practices Board

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

## Office of the Insurance Commissioner

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

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

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

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

## Stakeholder Comments

ORIA invited the Association of Washington Business, Association of Washington Cities, Futurewise, Independent Business Association, National Federation of Independent Business, the Nature Conservancy, Washington Environmental Council, Washington State Association of Counties and the Washington State Labor Council to participate in training opportunities on use of the Interactive Reporting Tool. Stakeholders were also offered opportunities to comment on the significant legislative rulemaking using the tool or in writing. No stakeholder comments were received.

## Other Information from Agencies

The Interactive Reporting Tool (IRT) offered agencies a chance to add other information. Submitted comments include:

### Department of Health

Significant legislative rules generally take more time to adopt than rules that are “not significant.” Significant legislative rules require filing a Pre-proposal Statement of Inquiry as well as the preparation of cost-benefit analyses and, where appropriate, preparation of small business economic impact statements or SBEIS before formal adoption. This takes additional time.

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 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.

### Office of the Insurance Commissioner

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

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

One of our goals is to increase the use of the relevant and most reliable data to support our initial assessment of rule proposals, so that rules reflect what we learn from the data. This supports the agency mission because the Commissioner regulates to both protect consumers and ensure a financially sound insurance marketplace in Washington.

## Appendix: Significant Legislative Rules and Responses by Agencies

Outlined below are the responses from the nine reporting agencies. The Employment Security Department reported no adoption of significant legislative rules and, therefore, no impacts over the last two years. Each response includes two sections: a table and a narrative.

The tables contain rows for each adoption, with information including:

1. Significant Legislative Rule Title
2. [Washington State Register](#) (WSR) Number
3. WSR Adoption Date
4. Rulemaking Description

Additional information, in either the table or the narrative under each agency section, includes:

1. Extent to which compliance with [RCW 34.05.328](#) affects the substance of the rule [from RCW 34.05.328 (6) (a)]
2. Costs incurred by state agencies in complying with [RCW 34.05.328](#) [from RCW 34.05.328 (6) (b)]
3. Information on any legal actions against agency for failure to comply with [RCW 34.05.328](#), costs to the state of such action, and the result [from RCW 34.05.328 (6) (c)]
4. Extent to which [RCW 34.05.328](#) has adversely affected the capacity of the agency to fulfill its legislatively prescribed mission [from RCW 34.05.328 (6) (d)]
5. Extent to which [RCW 34.05.328](#) has improved the acceptability of state rules [from RCW 34.05.328 (6) (e)]
6. Other relevant information in evaluating the effect of [RCW 34.05.328](#) [from RCW 34.05.328 (6) (f)]
7. General additions, response, comments and inclusions

## Department of Ecology

Department of Ecology		
Significant Legislative Rule Title	Adoption/Filing Date	Rule Description <i>Purpose of Rulemaking based on the "Rule-Making Order" form (CR-103)</i>
WAC 173-441: Reporting of Emissions of Greenhouse Gases	Filed: 01/29/15	<p style="text-align: center;"><b><u>Program: Air Quality</u></b></p> <p>The Washington State Department of Ecology (Ecology) amended WAC 173-441 – Reporting of Emissions of Greenhouse Gases in order to maintain consistency with the United States Environmental Protection Agency (EPA)'s Greenhouse Gas Reporting Program, as required by RCW 70.94.151. The following are examples of the amendments:</p> <ul style="list-style-type: none"> <li>• Revising the Global Warming Potentials (GWPs) in WAC 173-441-040</li> <li>• Updating calculation and monitoring methods</li> <li>• Making minor streamlining revisions to reporting requirements</li> <li>• Correcting minor errors and improving readability</li> </ul> <p>Ecology did not change requirements established in WAC 173-441 for transportation fuel suppliers or the following elements pertaining to facilities: reporting threshold, confidential business information, or fees.</p>
WAC 173-433: Solid Fuel Burning Devices	Filed: 01/23/14	<p style="text-align: center;"><b><u>Program: Air Quality</u></b></p> <p>Solid Fuel Burning Devices (WAC 173-433) helps to reduce Washington's wood smoke emissions to help meet federal air quality standards. The focus of this rulemaking was to:</p> <ol style="list-style-type: none"> <li>1. Modify thresholds for calling burn bans in areas at risk for nonattainment as outlined in law. <ul style="list-style-type: none"> <li>• Align the rule with other law changes.</li> </ul> </li> </ol>

Department of Ecology		
Significant Legislative Rule Title	Adoption/Filing Date	Rule Description <i>Purpose of Rulemaking based on the "Rule-Making Order" form (CR-103)</i>
		<ul style="list-style-type: none"> <li>• Meet Environmental Protection Agency (EPA) requirements.</li> <li>• Help Washington's efforts to improve air quality in areas affected by pollution from wood stoves.</li> <li>• Include housekeeping changes that improve rule clarity and consistency.</li> </ul>
		<b><u>Program: Air Quality</u></b>
WAC 173-485: Petroleum Refinery Greenhouse Gas Emission Requirements	Filed: 05/28/14	<p>The purpose of this rulemaking was to:</p> <p>Adopt a new rule, WAC 173-485 Petroleum Refinery Greenhouse Gas Emission Requirements. This rule establishes reasonably available control technology (RACT) to limit greenhouse gas (GHG) emissions from petroleum refineries in Washington State.</p>
		<b><u>Program: Hazardous Waste and Toxics Reduction</u></b>
WAC 173-303: Dangerous Waste Regulations	Filed: 12/18/14	<p>The Department of Ecology adopted amendments to WAC 173-303 Dangerous Waste Regulations. Updates are to be current with the federal hazardous waste program. Several federal hazardous waste rules are being adopted into the state Dangerous Waste Regulations, including a new rule simplifying waste management at university and college laboratories, changes to import/export rules, incorporating corrections to the United States Environmental Protection Agency (EPA) hazardous waste regulations, and a few other new, minor federal rules. See below for more details. The EPA Federal Register summaries of these rules (available in the Preamble and Summary of proposed rules) and the adopted rule language are available at <a href="http://www.ecy.wa.gov/programs/hwtr/laws_rules/DWRulemaking.html">http://www.ecy.wa.gov/programs/hwtr/laws_rules/DWRulemaking.html</a>.</p> <p><b>Federal hazardous waste rules adopted:</b></p> <ol style="list-style-type: none"> <li>1. Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and</li> </ol>



Department of Ecology		
Significant Legislative Rule Title	Adoption/Filing Date	Rule Description <i>Purpose of Rulemaking based on the "Rule-Making Order" form (CR-103)</i>
		Other Eligible Academic Entities Formally Affiliated With Colleges and Universities. December 1, 2008 - 73 FR 72912.
		2. Technical Corrections to the Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated With Colleges and Universities. December 20, 2010 – 75 FR 79304.
		3. Revisions to the Requirements for: Transboundary Shipments of Hazardous Wastes Between OECD Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes. January 8, 2010 – 75 FR 1236.
		4. Hazardous Waste Technical Corrections and Clarifications Rule. March 18, 2010 – 75 FR 12989 and June 4, 2010 – 75 FR 31716.
		5. Hazardous Waste Technical Corrections and Clarifications Rule. April 13, 2012 – 77 FR 22229.
		6. Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents, Hazardous Wastes, and Hazardous Substances. December 17, 2010 – 75 FR 78918.
		7. Hazardous Waste Manifest Printing Specifications Correction Rule. June 22, 2011 – 76 FR 36363.
		8. Land Disposal Restrictions: Revision of the Treatment Standards for Carbamate Wastes. June 13, 2011 – 76 FR 34147.

Department of Ecology		
Significant Legislative Rule Title	Adoption/Filing Date	Rule Description <i>Purpose of Rulemaking based on the "Rule-Making Order" form (CR-103)</i>
		<p><b>State-initiated amendments adopted:</b></p> <p>Ecology adopted other state-initiated amendments not related to the federal rules listed above. Significant changes are described below. The final adopted rule language is available on Ecology's website at:  <a href="http://www.ecy.wa.gov/programs/hwtr/laws_rules/DWRulemaking.html">http://www.ecy.wa.gov/programs/hwtr/laws_rules/DWRulemaking.html</a></p> <p><b>WAC 173-303-073(2)(e)(v).</b> A thirty-day time limit is established for special waste held at solid waste transfer stations. This will reduce chances of pollution resulting from storage of special waste at transfer stations.</p> <p><b>WAC 173-303 sections 200, 400, 64690, 650, 660, 665 and 806.</b> Adds the requirement that facilities use an "independent qualified registered professional engineer" instead of a "qualified professional engineer" (or similar language) for regulatory certifications. These changes provide consistency throughout the regulations for the regulated community and promote quality assurance at treatment, storage and disposal facilities.</p> <p><b>WAC 173-303 sections 400, 645, 800 and 806.</b> Adopt rules allowing use of enforceable documents in lieu of RCRA post closure permits. This option provides an easier, more efficient regulatory process for facilities entering post closure while maintaining appropriate agency oversight.</p> <p><b>WAC 173-303-620.</b> Several areas of the financial assurance rule are being changed. The adopted rule includes a raise to the minimum tangible net worth requirement from \$20 million to \$25 million to qualify for use of the financial test or corporate guarantee option. We are also increasing the minimum financial assurance amounts for liability coverage. Both of these changes are made to keep pace with inflation.</p> <p><b>WAC 173-303-64620(5).</b> This change adds rules for financial assurance at corrective action sites. This rule will codify existing EPA guidance and current Ecology practice as it is used in Agreed Orders and Consent Decrees. No federal or state financial</p>

Department of Ecology		
Significant Legislative Rule Title	Adoption/Filing Date	Rule Description <i>Purpose of Rulemaking based on the "Rule-Making Order" form (CR-103)</i>
		<p>assurance rules previously existed for corrective action sites, and by creating these rules, it will reduce negotiation time involved in establishing financial assurance.</p> <p><b>WAC 173-303-905.</b> This rule is being deleted because it is in conflict with the Public Records Act (RCW 42.56) and is unnecessary.</p> <p><b>Revisions to the Chemical Test Methods Guidance</b></p> <p>Ecology also updated the Chemical Test Methods Guidance to clarify test methods for persistent dangerous waste.</p>
		<b><u>Program: Shorelands and Environmental Assistance</u></b>
WAC 197-11: SEPA Rules, WAC 173-806: Model Ordinance, and WAC 197-06: Public Records	Filed: 04/09/14	<p><b>Purpose of the rule and its anticipated effects, including any changes in existing rules:</b></p> <p>Ecology adopted amendments to <b>WAC 197-11</b>, State Environmental Policy Act (SEPA). The rule changes include, but are not limited to the following:</p> <ul style="list-style-type: none"> <li>• Expanded use of NEPA documentation by lead agencies.</li> <li>• Update of definition for "lands covered by water."</li> <li>• For adoption of increased flexible thresholds for minor new construction, more specific requirements regarding cultural resources and an increase in notice to 60 days.</li> <li>• Expanded minor new construction exemptions for installation or removal of tanks and solar energy projects.</li> <li>• New exemption for small maintenance dredging projects.</li> <li>• Update of exemption for land use decisions to provide that most land use decisions will be exempt for otherwise exempt projects, with some limited</li> </ul>

Department of Ecology		
Significant Legislative Rule Title	Adoption/Filing Date	Rule Description <i>Purpose of Rulemaking based on the "Rule-Making Order" form (CR-103)</i>
		<p>exceptions.</p> <ul style="list-style-type: none"> <li>• New exemption for formation of special districts.</li> <li>• New exemption for text amendments of ordinances or codes that do not change environmental standards.</li> <li>• Update of utility exemption for water pipe size to align with industry standards.</li> <li>• Allow Department of Natural Resource (DNR) Rock sales on state owned land.</li> <li>• Clarified and expanded Washington State Department of Transportation (WSDOT) maintenance exemptions.</li> <li>• Environmental checklist updates.</li> <li>• Other minor updates, clarifications and technical corrections.</li> </ul> <p>Ecology repealed <b>WAC 173-806 - Model Ordinance</b> in response to changes being made in WAC 197-11 and will make the model ordinance available as guidance rather than rule.</p> <p>Ecology repealed <b>WAC 197-06 – Public Records</b>. This rule is being repealed because (1) a number of the provisions are specific to the Council on Environmental Policy that was established in the 1970's and no longer exists; (2) The sections of the rule related to public records have been superseded by WAC 173-03.</p>
WAC 173-557: Water Resources Management Program for the Spokane River and Spokane Valley Rathdrum Prairie (SVRP) Aquifer and amendment	Filed: 01/27/15	<p><b><u>Program: Water Resources</u></b></p> <p>The adoption of this new water resources management rule, WAC 173-557 – Water Resources Management Program for the Spokane River and Spokane Valley Rathdrum Prairie (SVRP) Aquifer, is needed to protect instream values within the Spokane River, avoid injury to existing water rights from future appropriations of water, help achieve</p>

Department of Ecology		
Significant Legislative Rule Title	Adoption/Filing Date	Rule Description <i>Purpose of Rulemaking based on the "Rule-Making Order" form (CR-103)</i>
to WAC 173-55-010		<p>water resource management objectives of Spokane area watershed plans adopted under RCW 90.82, and establish and protect Washington State interests in the water resources of the Spokane River. This rule sets instream flows, and requires that new uses of water be interrupted when instream flows are not met, unless impacts to surface water are mitigated. This rule helps the Washington State Department of Ecology meet statutory obligations to manage waters for public use and for the protection of instream flows.</p> <p>The amendment to WAC 173-555-010 is needed to clarify the application of WAC 173-555 in the area where the new rule (WAC 173-557) will overlap with the existing rule (WAC 173-555 – Water Resources Program in the Little Spokane River Basin, WRIA 55).</p>
WAC 173-351: Criteria for Municipal solid Waste Landfills	Filed: 10/06/15	<p style="text-align: center;"><b><u>Program: Waste 2 Resources</u></b></p> <p>The Department of Ecology revised Appendix 3 of WAC 173-351-990 to include two hazardous organic constituents: 2,3,7,8-Tetrachlorodibenzo- p-dioxin - [CAS 1746-01-6] and alpha, alpha-Dimethyl phenethylamine [CAS 122-09-8]. This revision is necessary to be consistent with federal rules in 40 CFR Part 258. Operators of municipal solid waste landfills must meet federal program requirements. Revising our rule eliminates possible noncompliance for facilities that inadvertently omit the two additional constituents required to be monitored under federal rules. It also clarifies monitoring requirements for local jurisdictional health authorities that have the lead for issuing and enforcing solid waste permits. These revisions will enable Ecology to obtain full approval of our municipal solid waste program from the U.S. Environmental Protection Agency (EPA).</p>
WAC 173-224: Wastewater Discharge Permit Fees	Filed: 11/18/15	<p style="text-align: center;"><b><u>Program: Water Quality</u></b></p> <p>To increase annual permit fees for the following fee types by 5.31% for State Fiscal Year 2016 and 5.27% for State Fiscal Year 2017: Aluminum Alloys, Aluminum Forming,</p>

Department of Ecology		
Significant Legislative Rule Title	Adoption/Filing Date	Rule Description <i>Purpose of Rulemaking based on the "Rule-Making Order" form (CR-103)</i>
		<p>Aggregate Production – Individual and General Permits, Aquatic Pest Control, Boatyards – Individual and General Permits, Coal Mining and Preparation, Concentrated Animal Feeding Operations, Dairies, Iron and Steel, Metal Finishing, Nonferrous Metals Forming, Ore Mining, Private and State Owned Facilities, Shipyards, Stormwater Construction – Individual and General Permits, Stormwater Industrial – Individual and General Permits, and Stormwater Municipal Phase 1 and 2 Permits.</p> <p>To increase annual permit fees for the following fee types by 3.25% for State Fiscal Year 2016 and 3.21% for State Fiscal Year 2017: Aquaculture, Aluminum and Magnesium Reduction Mills, Combined Industrial Waste Treatment, Combined Food Processing Waste Treatment, Combined Sewer Overflow System, Commercial Laundry, Crop Preparing – Individual and General Permits, Facilities Not Otherwise Classified – Individual and General Permits, Flavor Extraction, Food Processing, Fuel and Chemical Storage, Hazardous Waste Cleanup Sites, Ink Formulation and Printing, Inorganic Chemicals Manufacturing, Noncontact Cooling Water With Additives – Individual and General Permits, Noncontact Cooling Water Without Additives – Individual and General Permits, Organic Chemical Manufacturing, Petroleum Refining, Photofinishers, Power and/or Steam Plants, Pulp, Paper and Paperboard, Radioactive Effluents and Discharges, RCRA Corrective Action Sites, Seafood Processing, Solid Waste Sites, Textile Mills, Timber Products, Vegetable/Bulb Washing Facilities, Vehicle Maintenance and Freight Transfer, Water Plants – Individual and General Permits and Wineries – Individual Permits.</p> <p>Ecology is also adding three new fee categories that will include Bridge Washing, In-Water Vessel Deconstruction, and Wineries-General Permit Coverage.</p> <p>King County DNR Wastewater Treatment will have fees increased by 4.22% for State Fiscal Year 2016 and 4.19% for State Fiscal Year 2017</p>

**1. Extent to which compliance with RCW 34.05.328 affects the substance of the rule [from RCW 34.05.328 (6) (a)]:**

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

The information Ecology prepares during rulemaking is intended to inform and document the process and to communicate information with interested parties. We have developed a standardized structure for the presentation of this information (for example the Cost-Benefit and Least Burdensome Alternatives Analyses and the Implementation Plan). These documents assist in establishing a framework for conversations with interested parties about the subject of the proposed rule. More recently, the economic analyses have become a focal point of conversations related to the impacts of a proposed rule or change. Further, information gathered to support the determinations in section 328 help Ecology be prepared to answer questions about what the rulemaking will do, its impacts, and why it is needed. Specific comments received from interested parties help Ecology understand the nature of their concerns and find ways to engage them in the process. These conversations, comments and discussion lead to the development of the initial proposal as well as changes that Ecology may incorporate into the final rule adoption.

**2. Costs incurred by state agencies in complying with RCW 34.05.328 [from RCW 34.05.328 (6) (b)]:**

Ecology does not track the costs associated with these requirements separately from other rulemaking activities (for example, public hearing costs or staff time to draft rule language or meet with interested parties). Costs associated with complying with this section include but are not limited to:

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

**3. Information on any legal actions against agency for failure to comply with RCW 34.05.328, costs to the state of such action, and the result [from RCW 34.05.328 (6) (c)]:**

Between January 1, 2014 and December 31, 2015, there was one legal action against the agency challenging the cost-benefit analysis required under RCW 34.05.328. The case is related to Ecology’s adoption of WAC 173 -518 Water resources management program for the Dungeness portion of the Elwha-Dungeness water resources inventory area-WRIA 18, Adopted 11/16/12. The case is Bassett et al. v Ecology, Thurston County Superior Court No. 14-2-02466-2. Under the watershed planning act, RCW 90.82.080, instream flow rules do not constitute significant legislative rules under RCW 34.05.328 and do not require the preparation of a SBEIS; however, the agency can opt into regular rulemaking under the Administrative Procedures Act, and that is what Ecology opted to do in the Dungeness to better bolster the rule.

The case is ongoing so costs and results are not known at this time.

**4. Extent to which RCW 34.05.328 has adversely affected the capacity of the agency to fulfill its legislatively prescribed mission [from RCW 34.05.328 (6) (d)]:**

The RCW 34.05.328 requirements do add cost and time to the rulemaking process; however, they promote analysis and deeper understanding of rule impacts. Environmental as well as jobs/business issues come up as part of rulemaking processes. The section 328 requirements help balance these issues in line with the agency's mission. In addition, the least burdensome alternatives analysis also considers Ecology's mission when examining the goals and objectives ensuring that the rules adopted are consistent with the agency's mission. This section supports Ecology's ability to fulfill its legislatively prescribed mission.

**5. Extent to which RCW 34.05.328 has improved the acceptability of state rules [from RCW 34.05.328 (6) (e)]:**

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

**6. Other relevant information in evaluating the effect of RCW 34.05.328 [from RCW 34.05.328 (6) (f)]:**

N/A

**7. General additions, response, comments and inclusions:**

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

Ecology tracks "significant legislative rulemaking" by rulemaking activity and chapter, not by sections within a chapter. If only one section in a rulemaking included significant legislative changes, the entire rulemaking is included in this report.



## **Department of Employment Security**

Employment Security reported no adoption of significant legislative rules and, therefore, no impacts over the last two years.

## Department of Fish and Wildlife

Department of Fish and Wildlife			
Significant Legislative Rule Title	WSR #and other appropriate references	Adoption Date	Rule Description
WAC 220-660: Hydraulics Code Rules Rewrite and Recodification	<p>CR-101 filed as WSR #11-15-050 on 07/28/11</p> <p>CR-102 filed as WSR #14-14-133 on 07/02/14</p> <p>SEPA Process:</p> <ul style="list-style-type: none"> <li>• Draft Programmatic Environmental Impact Statement - comments accepted October 1 through December 29, 2013.</li> <li>• Supplemental Draft Programmatic Environmental Impact Statement - comments accepted July 16 through August 15, 2014.</li> <li>• Programmatic Environmental Impact Statement final on October 27, 2014.</li> </ul>	<p>The Hydraulics Code Rules Rewrite was adopted by the Fish and Wildlife Commission on 12/05/14, and the CR-103P was filed as WSR #15-02-029 on 12/30/14</p>	<p>DFW protects fish life by using its authority (RCW 77.55) to provide approvals for construction projects in or near waters of the state. DFW issues Hydraulic Project Approvals (HPAs) for projects that use, divert, obstruct or change the natural flow or bed of any of the salt or fresh waters of the state. HPAs are issued based on the Hydraulic Code Rules. DFW revised the Hydraulic Code Rules to improve protections for fish and streamline the permit approval process.</p> <p>The Hydraulic Code Rules, except those for mineral prospecting, were last updated in 1994 before Washington fish species were listed under the Endangered Species Act. There were also changes to the hydraulic code statutes (RCW 77.55), to other regulations, and to fish science and design technology after 1994. The Hydraulic Code Rules in WAC 220-110 did not reflect those changes. DFW rewrote and replaced the entire chapter (WAC 220-660) so the content is easier for the applicant to understand, and so the rules reflected the statutory changes and contemporary science and design technology. Placing the Hydraulic Code Rules in the new Chapter was also in advance of a larger regulatory overhaul effort that will include recodification and reorganization of DFW's Administrative Code.</p>

**1. Extent to which compliance with RCW 34.05.328 affects the substance of the rule [from RCW 34.05.328 (6) (a)]:**

The former WAC 220-110 Hydraulic Code Rules was amended and re-codified as WAC 220-660. The substance of the rule amendment was affected by the extensive public outreach effort. Compliance with this RCW 34.05.328 did not affect the substance of this rule change.

**2. Costs incurred by state agencies in complying with RCW 34.05.328 [from RCW 34.05.328 (6) (b)]:**

The estimated cost of complying with the section was \$66,337. The Washington Department of Fish and Wildlife (DFW) incurred additional costs because we hired an economist to prepare the cost/benefit analysis and small business economic impact statement. The economist also assisted with preparing the implementation plan required by RCW 34.05.328 and carrying out the implementation plan.

DFW issued a Programmatic Environmental Impact Statement (PEIS) on the proposed rule amendment. Many of the requirements in RCW 34.05.328(1) were incorporated into the PEIS. Since DFW would have issued a PEIS and conducted staff and stakeholder training regardless of whether the rules were significant legislative rules, the cost of addressing these requirements is not included in the compliance cost.

Cost/ benefit analysis and small business economic impact statement:

Vendor Cardno ENTRIX.....	\$32,000
Staff costs (Thurston \$8093, Barnard \$6882).....	<u>\$14,975</u>
Sub-total	\$46,975

Implementation plan

Plan preparation.....	\$7,190
Staff and affected stakeholder training.....	N/A*
Promoting and assisting voluntary compliance.....	\$2,062
Evaluation.....	<u>\$10,110</u>
Sub-total	\$19,362

Total Cost \$66,337

\* The department would have incurred the cost of training regardless of whether the rules were significant legislative rules.

**3. Information on any legal actions against agency for failure to comply with RCW 34.05.328, costs to the state of such action, and the result [from RCW 34.05.328 (6) (c)]:**

The only legal action was a petition under RCW 34.05.330 to repeal the rules. The petition was received on November 17, 2014. The petition stated, "This rule is being adopted without following the administrative procedures act 34.05.328, thereby breaking RCW and places the Department out of compliance with legislative intent." The petition also stated that the rule "includes adaptive management, with no funding mechanism placing the taxpayers under obligation unknown."

The Fish and Wildlife Commission heard the petition during its December 5, 2014, conference call. After reviewing the November 17, 2014, petition and hearing the Department's presentation on both of the issues brought forward, the Commission voted to deny the petition based on the fact that both concerns were addressed at the Commission meeting.

After the decision, Commissioner Schmitt recognized the petition had raised a good issue regarding the implementation plan. For this reason, the petition resulted in a better rule adoption process.

**4. Extent to which RCW 34.05.328 has adversely affected the capacity of the agency to fulfill its legislatively prescribed mission [from RCW 34.05.328 (6) (d)]:**

Compliance with this section did not adversely affect the capacity of DFW to fulfill our mission. This large rule amendment project took over five years to complete. The majority of expense for the rule amendment was staff cost/time. The added staff cost/time needed to comply with this section was a small percentage of the overall amount. The cost of the economic analysis and carrying out the implementation plan were minimal.

**5. Extent to which RCW 34.05.328 has improved the acceptability of state rules [from RCW 34.05.328 (6) (e)]:**

The lengthy but transparent rule update process improved the acceptability of rule amendment by the regulated community. Based on the feedback we received, the cost/benefit analysis, the small business economic impact statement and the implementation plan were important to the regulated community. The economic analysis study, in particular, garnered feedback from the regulated community who wanted to ensure an accurate reflection of any increased costs. The conclusions of the cost/benefit analysis and small business economic impact statement helped reassure the regulated community that the rule amended would not significantly increase costs.

**6. Other relevant information in evaluating the effect of RCW 34.05.328 [from RCW 34.05.328 (6) (f)]:**

No response entered.

**7. General additions, response, comments and inclusions:**

None response entered.

## Department of Health

Department of Health			
Significant Legislative Rule Title and Rule Description	WSR # and other references	Adoption Date	Costs incurred by state agencies in complying with RCW 34.05.328
WAC 246-933-460: Courses Approved by the Veterinary Board. Amends the rules approving continuing veterinary medical education.	WSR #14-04-020; Proposed and Adopted 1 WAC section	12/02/13	\$455.00
WAC 246-847: Occupational Therapists.  Amends WAC 246-847-010: Definitions and WAC 246-847-065: Continued Competency; and adds new section WAC 246-847-066: Suicide Assessment Training Program Standards, in order to implement 2012 and 2013 legislation regarding training and continuing education in suicide assessment.	WSR# 14-05-016; Proposed and Adopted 3 WAC sections	12/16/13	\$4,719.00
WAC 246-933-275: Reactivation of An Expired Veterinary License. New rule added to set requirement to reinstate a veterinary license that has been expired for more than three years.	WSR #14-06-067; Proposed and Adopted 1 WAC section	12/02/13	\$1,149.00
WAC 246-809: Licensure For Mental Health Counselors, Marriage And Family Therapist, Advanced Social Workers, And Independent Clinical Social Workers; WAC 246-811: Chemical Dependency Professionals and Chemical Dependency Professionals Trainees and; WAC 246-810: Counselors.  Amended and added new rules to implement the suicide assessment, treatment and management training requirements set out in RCW 43.70.442.	WSR #14-09-102; Proposed and Adopted 12 WAC sections	04/22/14	\$5,195.00
WAC 246-101-010: Definitions updated to change definition of "elevated blood level" for children and adults to be consistent with	WSR #14-11-009; Proposed and Adopted 1	03/12/14	\$8,586.00

Department of Health			
Significant Legislative Rule Title and Rule Description	WSR # and other references	Adoption Date	Costs incurred by state agencies in complying with RCW 34.05.328
CDC and changed term "boarding home" to "assisted living facility" consistent with SHB 2056.	WAC section		
WAC 246-812-240: Non-orthodontic Removable Oral Devices and WAC 246-812-250: Teeth whitening devices.	WSR #14-13-102; Proposed and Adopted 2 WAC sections	04/25/14	\$9,982.00
WAC 246-440.  Created a new chapter for health care associated infections (HAI) reporting. The department adopted a new reporting condition, Clostridium difficile infection to the HAI reporting requirements for acute care hospitals. The rule aligns state reporting with Centers for Medicare and Medicaid Services requirements using the Centers for Disease Control and Prevention National Healthcare Safety Network LabID event method.	WSR #14-16-056; Proposed and Adopted 2 WAC sections	07/30/14	\$6,696.00
WAC 246-976.  WAC 246-976-420: Department Responsibilities and WAC 246-976-430: Trauma Registry-Provider Responsibilities were amended to update requirements.	WSR #14-19-012; Proposed and Adopted 2 WAC sections	09/02/14	\$12,897.00
WAC 246-817-160: Dental Quality Assurance Commission Graduates of Non-accredited Schools.	WSR #14-20-064; Proposed and Adopted 1 WAC section	07/18/14	\$5,348.00
WAC 246-824-220: Retention of Contact Lens Records.	WSR #14-20-067; Proposed and Adopted 1 WAC section	07/08/14	\$637.00

Department of Health			
Significant Legislative Rule Title and Rule Description	WSR # and other references	Adoption Date	Costs incurred by state agencies in complying with RCW 34.05.328
WAC 246-817-770: Dental Quality Assurance Commission General Anesthesia and Deep Sedation.	WSR #14-21-068; Proposed and Adopted 1 WAC section	11/11/14	\$4,964.00
WAC 246-790.  Amends rules that regulate the department's food delivery system within the Women, Infants and Children (WIC) Nutrition program. The rule provides support for the operation of the WIC Nutrition Program, assists in contracting with retail partners, and maximizes agency options for determining participant access. The rule provides necessary clarifications and consistency with federal rules and directives.	WSR #14-21-110; Proposed and Adopted 10 WAC sections	10/16/14	\$21,044.00
WAC 246-840-740.  Amends the sexual misconduct standards for practitioners licensed by the Nursing Care Quality Assurance Commission.	WSR #14-21-112; Proposed and Adopted 1 WAC section	09/12/14	\$6,831.00
WAC 246-812.  Board of Denturists amending the chapter to implement Chapter 171, Laws of 2013 and make other rule changes.	WSR #14-24-033; Proposed and Adopted 39 WAC sections	09/26/14	\$14,031.00
WAC 246-854: Osteopathic Physician Assistants (PAs).  This chapter was amended to update the osteopathic PA rules to incorporate national standards and best practices pursuant to SHB 1737 (Chapter 203, Laws of 2013).	WSR #15-03-013; Proposed and Adopted 23 WAC sections	12/05/14	\$26,352.00
WAC 246-918.	WSR #15-04-122;	12/05/14	\$45,211.00

Department of Health			
Significant Legislative Rule Title and Rule Description	WSR # and other references	Adoption Date	Costs incurred by state agencies in complying with RCW 34.05.328
Rules revised pursuant to SHB 1737 and PA rules updated to incorporate current national standards.	Proposed and Adopted 27 WAC sections		
WAC 246-080-150: Commission Approved Continuing Education. Amended continuing education requirements for chiropractors.	WSR #15-07-005; Proposed and Adopted 1 WAC section	12/11/14	\$1,641.00
WAC 246-824-075: Continuing Education For Dispensing Opticians. Amended the number of hours of continuing education that is reported each year of a three year reporting cycle.	WSR #15-07-006; Proposed and Adopted 1 WAC section	03/06/15	\$1,024.00
WAC 246-282-006. State Vp Control plan rules was revised to include more proactive measures to prevent illness and protect public health.	WSR #15-08-083; Proposed and Adopted 1 WAC section	03/11/15	\$93,996.00
WAC 246-836: Naturopathic Physician Licensure Examinations. WAC 246-836-020 thru 040 and WAC 246-836-110 thru 120 regarding licensure examinations are amended. WAC 246-836-050 Re-Examinations is appealed.	WSR #15-10-028; Proposed and Adopted 6 WAC	02/27/15	\$1,704.00
WAC 246-358: Temporary Worker Housing and WAC 246-359: Temporary Worker Housing Construction Standard are amended and add new sections to clarify terms and conditions, increase agency program efficiencies, clarify, inspection frequencies, improve health and safety standards. Repeal WAC 246-361: Cherry Harvest Camps and incorporate in WAC 246-358 and WAC 246-359.	WSR #15-13-091; Proposed and Adopted 90 WAC sections	06/15/15	\$74,075.00
WAC 246-320: Hospital Licensing Regulations (construction	WSR #15-14-001;	05/14/15	\$11,701.00



Department of Health			
Significant Legislative Rule Title and Rule Description	WSR # and other references	Adoption Date	Costs incurred by state agencies in complying with RCW 34.05.328
standards only) were amended to align with current federal standards and national consensus codes as recognized by the industry.	Proposed and Adopted 3 WAC sections		
WAC 246-828: Hearing and Speech amended to implement EHB 2108 to establish standards for a 9 mo. certificate as a route to licensure; and general updates for housekeeping, exam standards, CE, sexual misconduct standards and added a provision for temporary practice permits for military spouses.	WSR #15-14-092; Proposed and Adopted 33 WAC sections	06/29/15	\$14,962.00
WAC 246-915: Physical therapists and physical therapist associates rules are amended to restate the education and training requirements to receive an endorsement to perform spinal manipulation and manipulative mobilizations of the spine; establish requirements as a clinical supervisor; CE requirements for suicide screening; and referral for PT and PT assistants.	WSR #15-14-093; Proposed and Adopted 5 WAC sections	06/29/15	\$7,245.00
WAC 246-815-020: Dental Hygiene Exam eligibility and WAC 246-815-140: Continuing Education is amended to streamline the application requirement for exam eligibility and provides more flexibility when a dental hygienist obtains CE.	WSR #15-15-144; Proposed and Adopted 2 WAC sections	05/29/15	\$4,637.00
WAC 246-853: amended or repealed rules relating to 1) exam for licensure as a DO; 2) delegation of the use of laser, light radiofrequency and plasma devices as applied to the skin; and 3) general housekeeping. New sections were also added to establish a retired active status credential and re-entry requirements for licensed DO's who have been out of practice for a certain period of	WSR #15-16-085; Proposed and Adopted 6 WAC sections	05/15/15	\$4,447.00

Department of Health			
Significant Legislative Rule Title and Rule Description	WSR # and other references	Adoption Date	Costs incurred by state agencies in complying with RCW 34.05.328
time.			
WAC 246-455: Hospital Discharge Information is amended and a new section created to strengthen protections of patient health care information.	WSR #15-19-152; Proposed and Adopted 7 WAC sections	08/05/15	\$13,823.00
WAC 246-834: Midwives application requirements and midwife-in-training sections were updated and new sections add to bridge the gap between national certification and state licensure requirements.	WSR #15-20-049; Proposed and Adopted 7 WAC sections	09/30/15	\$3,412.00
WAC 246-834: Midwives.  Implementation of 2SHB 1773 (Chapter 187, Laws of 2014) requiring licensed midwives renew their license with the following requirements: complete 30 hours of continuing education ever three years; participate in a peer review process by submitting five clinical cases for review every two years; and participate annually in a data submission program on perinatal outcomes to an approved research organization.	WSR #15-24-092; Proposed and Adopted 4 WAC sections	11/24/15	\$3,462.00
WAC 246-926-180: Parenteral Procedures. Amended the parenteral procedure rule for radiologic technologist to clarify that accessing peripherally inserted central catheter (PICC) lines and ports for manual and power injections is within their existing statutory scope of practice.	WSR #15-24-093; Proposed and Adopted 1 WAC section	11/30/15	\$2,101.00
WAC 246-928-442: Continuing Education. Amending the continuing education rules for respiratory care practitioners and repealing WAC 246-928-441.	WSR #15-24-095; Proposed and Adopted 2 WAC sections	11/30/15	\$2,386.00

Department of Health			
Significant Legislative Rule Title and Rule Description	WSR # and other references	Adoption Date	Costs incurred by state agencies in complying with RCW 34.05.328
WAC 246-851-090 through 246-851-230 (amended), creates new sections (WAC 246-851-125 and WAC 246-851-155), and repeals sections (WAC 246-851-110; WAC 246-851-130; WAC 246-851-180; and WAC 246-851-190) to provide an updated framework for optometrists to follow when selecting continuing education courses. The rules group continuing course types into five clearly defined categories.	WSR #15-24-119; Proposed and Adopted 12 WAC sections	12/01/15	\$5,591.00
WAC 246-922-300: Podiatric Continuing Education Required and WAC 246-922-310: Categories of creditable podiatric continuing education activities.  The Podiatric Medical Board adopted amendments to change Continuing Medical Education (CME) requirements for podiatric physicians and surgeons from 50 hours every two years to 100 hours every two years. Current rules require all CME be directly related to the delivery of patient care. The amendments offer several new options to earn CME credits.	WSR #16-01-106; Proposed and Adopted 2 WAC sections	12/16/15	\$3,661.00
WAC 246-922-030: Approved Schools Of Podiatric Medicine and WAC 246-922-040: Examinations.  Replacing outdated language and standards regarding recognized schools of podiatric medicine and exam requirements with current terms and standards. Repealing WAC 246-922-100, acts that may be delegated to unlicensed persons, because assistive personnel working for podiatric physicians must obtain a medical assistant credential to perform clinical tasks.	WSR #16-01-114; Proposed and Adopted 3 WAC sections	12/17/15	\$3,523.00

**1. Extent to which compliance with RCW 34.05.328 affects the substance of the rule [from RCW 34.05.328 (6) (a)]:**

Compliance with RCW 34.05.328 did not affect the substance of any of the rules adopted from January 1, 2014 through December 31, 2015 (See table above).

This biannual report describes the adopted significant legislative rules filed with the Code Reviser from January 1, 2014 through December 31, 2015 by the Department of Health (department), and the 17 health professions boards and commissions with independent rulemaking authority.

**2. Costs incurred by state agencies in complying with RCW 34.05.328 [from RCW 34.05.328 (6) (b)]:**

Significant legislative rules generally cost more to adopt than rules that are “not significant.” The department, and the related health profession boards and commissions adopted 34 significant legislative rules adopted from January 1, 2014 through September 30, 2015.

Total costs for each individual rule are identified in the table below. Costs of adopting significant legislative rules include staff and board and commission member time to develop the rule; preparation of cost-benefit analyses; public meetings (including workshops, rule drafting meetings, and formal hearings); some printing and postage; administrative costs; and, where appropriate, preparation of small business economic impact statements or SBEIS. A large number of stakeholders or complex subject matter may require an increased number of stakeholder meetings, which also increases costs.

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

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

The most costly rule, totaling \$74,075, was adopted by the department to update existing standards for temporary worker housing. RCW 70.114A requires the Department of Health in conjunction with Labor and Industries to adopt rules. The adopted rules align federal and state standards, in particular adopting long-standing federal migrant housing standards in 29 Code of Federal Regulations (CFR) 1910.142, and adopt in rule current state policies for the temporary worker housing program. The rules increase agency program efficiencies, improve enforcement capabilities, decrease on-site survey (inspection) frequencies while maintaining health and safety standards, and clarify many terms and conditions.

**3. Information on any legal actions against agency for failure to comply with RCW 34.05.328, costs to the state of such action, and the result [from RCW 34.05.328 (6) (c)]:**

There were no legal actions against the Department of Health for failure to comply with RCW 34.05.328.

**4. Extent to which RCW 34.05.328 has adversely affected the capacity of the agency to fulfill its legislatively prescribed mission [from RCW 34.05.328 (6) (d)]:**

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

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

**5. Extent to which RCW 34.05.328 has improved the acceptability of state rules [from RCW 34.05.328 (6) (e)]:**

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.

**6. Other relevant information in evaluating the effect of RCW 34.05.328 [from RCW 34.05.328 (6) (f)]:**

Significant legislative rules generally take more time to adopt than rules that are "not significant." Significant legislative rules require filing a Preproposal Statement of Inquiry as well as the preparation of cost-benefit analyses and, where appropriate, preparation of small business economic impact statements or SBEIS before formal adoption. This takes additional time.

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.

**7. General additions, response, comments and inclusions:**

No response entered.

## State Board of Health

State Board of Health					
Significant Legislative Rule Title	WSR #	Adoption Date	Description	Costs incurred by state agencies in complying with RCW 34.05.328	Other relevant information in evaluating the effect of RCW 34.05.328
WAC 246-101-010, Definitions within the notifiable conditions regulations. Amendments to the definitions of "assisted living facility," "elevated blood lead level," and "laboratory."	WSR #14-11-009	05/08/14	Amended the definition of "elevated blood lead level" for children and adults for consistency with the Centers for Disease Control and Prevention guidance for children and adults; changed the term "boarding home" to "assisted living facility" consistent with SBH 2056, Chapter 10, Laws of 2012; and clarified the definition of "laboratory."	\$8, 586.00	Significant legislative rules generally take more time to adopt than rules that are "not significant." Significant legislative rules require filing a Preproposal Statement of Inquiry as well as the preparation of cost-benefit analyses and, where appropriate, preparation of small business economic impact statements before formal adoption.
WAC 246-282-006 Washington State Vibrio parahaemolyticus (Vp) control plan	WSR #15-08-083	03/31/15	The state Vp Control plan was amended to include more proactive measures to prevent illness and protect public health.	\$93,996.00 (See note 2 below)	Inviting significant stakeholder participation in rule development is a core value of the board. Although this level of

State Board of Health					
Significant Legislative Rule Title	WSR #	Adoption Date	Description	Costs incurred by state agencies in complying with RCW 34.05.328	Other relevant information in evaluating the effect of RCW 34.05.328
					<p>public involvement increases the overall cost of rulemaking, those efforts tend to increase public acceptance of the rules.</p> <p>This rule was adopted by the board to better protect shellfish consumers from Vp-related illnesses. Consuming raw or undercooked oysters can lead to gastrointestinal illness caused by the pathogenic form of Vibrio parahaemolyticus bacteria found in oysters.</p>



**1. Extent to which compliance with RCW 34.05.328 affects the substance of the rule [from RCW 34.05.328 (6) (a)]:**

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

**2. Costs incurred by state agencies in complying with RCW 34.05.328 [from RCW 34.05.328 (6) (b)]:**

Significant legislative rules generally cost more to adopt than rules that are “not significant.” Costs of adopting significant legislative rules include staff and board member time to develop the rule; preparation of cost-benefit analyses; public meetings (including workshops, rule drafting meetings, and formal hearings); some printing and postage; administrative costs; and, where appropriate, preparation of small business economic impact statements or SBEIS. A large number of stakeholders or complex subject matter may require an increased number of stakeholder meetings, which also increases costs.

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

Washington State produces oysters intended for raw consumption for state, national, and international markets. According to the Washington Shellfish Initiative, Washington’s shellfish industry contributes over \$270 million towards the economy with much of Washington’s oysters exported nationally and internationally. The shellfish industry in Washington includes 349 licensees dealing with all types of shellstock, including clams, oysters, geoduck, and others. Approximately 150 of these licensees deal with shellstock oysters during the summer months. These licensees include tribal, small and large companies operating in Puget Sound and in coastal areas.

**3. Information on any legal actions against agency for failure to comply with RCW 34.05.328, costs to the state of such action, and the result [from RCW 34.05.328 (6) (c)]:**

There were no legal actions against the agency for failure to comply with RCW 34.05.328.

**4. Extent to which RCW 34.05.328 has adversely affected the capacity of the agency to fulfill its legislatively prescribed mission [from RCW 34.05.328 (6) (d)]:**

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

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

**5. Extent to which RCW 34.05.328 has improved the acceptability of state rules [from RCW 34.05.328 (6) (e)]:**

The board 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 board's efforts to communicate with and include them in rule development. However, this has been true for both significant rules and non-significant rules.

Periodically 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.

**6. Other relevant information in evaluating the effect of RCW 34.05.328 [from RCW 34.05.328 (6) (f)]:**

See far right column on Table above.

**7. General additions, response, comments, and inclusions:**

The adopted revisions to the *Vibrio parahaemolyticus* (Vp) control plan includes more proactive measures to prevent illness and protect public health. The rule includes a combination of requirements based on environmental factors to determine the safety of shellfish prior to harvest and consumption. In addition, the board adopted revisions for clarity and consistency with the National Shellfish Sanitation Program (NSSP) Model Ordinance.

The board and the Department of Health's Office of Shellfish and Water Protection (department) did extensive stakeholder work on this rule. The board and the department worked with an advisory committee made up of shellfish industry representatives to draft the proposed rule, considering a range of options to reduce *Vibrio parahaemolyticus*-associated illness. The advisory committee was made up of several licensed shellfish harvesters and dealers including individual tribal members. The advisory committee also included representatives of the Northwest Indian Fisheries Commission, Point No Point Treaty Council, Pacific Coast Shellfish Growers Association, Washington Sea Grant, Local Health Jurisdictions, U.S. Food and Drug Administration, and the Washington State Department of Fish and Wildlife.

## Department of Labor & Industries

Department of Labor & Industries				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	Costs incurred by state agencies in complying with RCW 34.05.328
Self-Insurance Continuing Education	WSR #14-02-121; Amended 1 WAC Section; WAC 296-15-350, Handling of claims.	01/02/14	This rulemaking clarified how course credits are assigned to continuing education courses for self-insured certified claims administrators. Customers were frequently frustrated when course credits were not awarded in the way the requestor expected (either receiving less credit than requested, or having the credit(s) applied to a different category than requested). This rulemaking defined the credit categories and clarified how course credits are assigned.	This significant legislative rulemaking did not add additional costs to the agency's rulemaking process since a cost-benefit analysis and small business economic impact statement was not prepared due to an exemption under RCW 19.85.025 and 19.85.0328. These changes were made to clarify the language of the rule without changing its effect.
Self-Insurance - Penalties for Delay of Medical Benefits	WSR 15-01-162; Amended 1 WAC Section; WAC 296-15-266, Penalties.	12/23/14	<p>This rulemaking defined the circumstances under which the Department will consider assessing a penalty for an unreasonable delay of benefits, and the process of this penalty request.</p> <p>This rule established general guidance and procedures as well as necessary clarifications on requesting and assessing penalties against self-insured employers for unreasonable delay of benefits, all of which are originated or required by the industrial insurance law under Title 51 RCW. The procedures and guidance established by this rule will help eliminate ambiguity that the Department</p>	This significant legislative rulemaking imposed additional costs to the agency in terms of dollars and staff requirement. RCW 34.05.328 requires a formal cost-benefit analysis, in addition to a small business economic impact statement; as a result, the agency required additional staff time of its economists and assistant attorney generals to develop and review these analyses.

Department of Labor & Industries				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	Costs incurred by state agencies in complying with RCW 34.05.328
			may encounter when the situation arises in the future.	
Elevator Fees	WSR #14-06-041; Amended 15 WAC Sections; WAC 296-96, Safety regulations and fees for all elevators, dumbwaiters, escalators and other conveyances.	02/26/14	<p>This rulemaking made changes to the elevator fees. In 2013, the Legislature passed Third Engrossed Substitute Senate Bill 5034 granting Labor and Industries the authority to increase the elevator fees by 13.1%. After evaluating the Elevator Program's budget and projected revenue, the Legislature deemed the 13.1% fee increase necessary in order to support the program's expenditures. Expenditures included the addition of 6 new full time employees (5 Inspectors and 1 Technical Specialist) as requested by the department.</p> <p>Labor and Industries, by law, must ensure the safety of all elevators and other conveyances by conducting annual inspections (RCW 70.87.120 (2) (a)). The program's staffing levels were inadequate to annually inspect all conveyances in the state, respond to customer inquiries, review plans of new and altered equipment, and conduct quality assurance reviews and training of field inspectors. The program needed the additional 6 new FTEs to meet its legal</p>	This significant legislative rulemaking imposed additional costs to the agency in terms of dollars and staff requirement. RCW 34.05.328 requires a formal cost-benefit analysis, in addition to a small business economic impact statement; as a result, the agency required additional staff time of its economists and assistant attorney generals to develop and review these analyses.

Department of Labor & Industries				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	Costs incurred by state agencies in complying with RCW 34.05.328
			obligation, ensure public safety, and reduce impacts to construction contractors and building owners.	
Electrical Rules	WSR #14-11-075; Amended 34 WAC Sections, Created 2 WAC Sections, Repealed 3 WAC Sections; WAC 296-46B, Electrical safety standards, administration, and installation.	05/20/14	<p>The Department modified the electrical rules to reflect safety code requirements from the 2014 edition of the National Electrical Code (NEC). The Department systematically reviews the electrical rules to ensure consistency with national electrical safety standards and industry practice as well as for rule clarity and housekeeping changes.</p> <p>This rulemaking:</p> <ul style="list-style-type: none"> <li>• Adopted modifications to existing rules to align with the 2014 NEC safety requirements;</li> <li>• Adopted exceptions to the national electrical safety standards to ensure public, worker, and structure safety;</li> <li>• Adopted proposals requested by stakeholders, such as: <ul style="list-style-type: none"> <li>○ Allowing riser conduit installations at the time the foundation is poured without inspection, as opposed to</li> </ul> </li> </ul>	This significant legislative rulemaking imposed additional costs to the agency in terms of dollars and staff requirement. RCW 34.05.328 requires a formal cost-benefit analysis, in addition to a small business economic impact statement; as a result, the agency required additional staff time of its economists and assistant attorney generals to develop and review these analyses.

Department of Labor & Industries				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	Costs incurred by state agencies in complying with RCW 34.05.328
			<p>inspection prior to the foundation being poured.</p> <ul style="list-style-type: none"> <li>○ Eliminate exceptions for receptacle installations in certain areas, such as garages, balconies, decks, etc. not readily accessible to discourage the use of extension cords and improve public safety.</li> <li>○ Align Washington's rules with the 2014 NEC requirements for residential Arc Fault protection.</li> </ul> <ul style="list-style-type: none"> <li>● Adopted modifications for general housekeeping, grammatical and reference corrections to bring the rules up-to-date.</li> </ul>	
Board of Boiler Rules	WSR #14-13-087; Amended 4 WAC Sections; Chapter 296-104 WAC, Board of boiler rules—Substantive.	06/17/14	The Board of Boiler Rules adopted amendments to WAC 296-104, Board of Boiler Rules – Substantive for new safety code requirements and a housekeeping change. The Board reviews boiler rules on a regular basis to ensure the rules are consistent with national boiler and unfired pressure vessel safety standards and industry practice. This rulemaking updated existing	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

Department of Labor & Industries				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	Costs incurred by state agencies in complying with RCW 34.05.328
			<p>requirements to ensure the most current standards are in place for proper construction, installation, inspection, operation, maintenance, alterations, and repairs of boilers and unfired pressure vessels that improve public safety.</p> <p>This rulemaking:</p> <ul style="list-style-type: none"> <li>• Adopted the 2013 (current edition) National Board Inspection Code (NBIC) requirements for boilers and unfired pressure vessels in the state of Washington;</li> <li>• Adopted the current revision of the National Board NB-263 standards, rules for national board in-service and new construction inspectors; and</li> <li>• Removed an obsolete reference to provide rule clarity and consistency in the rules.</li> </ul>	additional staff time of its economists and assistant attorney generals to develop and review these analyses.
Board of Boiler Rules	WSR #15-14-100; Amended 5 WAC Sections; WAC 296-104, Board of Boiler Rules – Substantive	06/30/15	The Board of Boiler Rules adopted amendments to WAC 296-104, Board of Boiler Rules – Substantive for new safety code requirements and a housekeeping change. The Board reviews boiler rules on a regular basis to ensure the rules are	This significant legislative rulemaking did not add additional costs to the agency's rulemaking process since a cost-benefit analysis and small business economic impact statement was not prepared

Department of Labor & Industries				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	Costs incurred by state agencies in complying with RCW 34.05.328
			<p>consistent with national boiler and unfired pressure vessel safety standards and industry practice. This rulemaking updated existing requirements to ensure the most current standards are in place for proper construction, installation, inspection, operation, maintenance, alterations and repairs of boilers and unfired pressure vessels that improve public safety.</p> <p>This rulemaking:</p> <ul style="list-style-type: none"> <li>• Adopted new definitions for “jacketed steam kettles” and updated the existing definition for “places of public assembly”;</li> <li>• Adopted the latest edition of national standards for American Petroleum Institute (API) 510 for boilers and unfired pressure vessels</li> <li>• Adopted the latest edition of national standards for TAPPI TIP 0402-16 for pulp or paper machine dryers;</li> <li>• Clarified the annual internal and external inspection requirements for</li> </ul>	<p>due to an exemption under RCW 34.05.328(5)(a) and RCW 34.053030(1)(a). These changes were to comply with national standards and would not impose more than minor costs on businesses.</p>



Department of Labor & Industries				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	Costs incurred by state agencies in complying with RCW 34.05.328
			<p>power boilers;</p> <ul style="list-style-type: none"> <li>• Clarified the shutdown requirements for automatically fired boilers, after December 2004;</li> <li>• Corrected references to National Board (NB) 263 and API 510 for continuous adoption of the latest edition of standards; and</li> <li>• Updated the definitions to modern-day terms by replacing the term for “boarding homes” with “assisted living facilities”.</li> </ul>	
Hazardous Communication – Global Harmonization	WSR #14-07-086; Amended 133 WAC Sections, Created 4 WAC Sections	03/18/14	In 2012, the Occupational Safety and Health Administration (OSHA) adopted rules aligning their Hazard Communication Standard and other standards containing hazard classification and communication provisions with the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). The Department’s rules must be at least as effective as OSHA so adopted Phase I of this Hazard Communication rulemaking in 2013. Phase I of this Hazard Communication rulemaking created a new rule (WAC 296-901-140) which incorporated all the elements	This significant legislative rulemaking did not add additional costs to the agency’s rulemaking process since a cost-benefit analysis and small business economic impact statement was not prepared due to an exemption under RCW 19.85.061. These changes were made to comply with federal statute, 29 CFR 1910 Subpart Z.

Department of Labor & Industries				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	Costs incurred by state agencies in complying with RCW 34.05.328
			<p>of the existing Department hazard communication rules into one rule.</p> <p>This rulemaking is Phase II and modified other existing Department rules to align with the GHS changes as required by OSHA's rule. In addition, this rulemaking made changes to WAC 296-901-140 to reflect minor corrections made to OSHA's rule in February 2013 and other necessary technical corrections.</p>	
Explosives	WSR #14-08-024; Amended 1 WAC Section; WAC 296-52-60020 Exemptions.	03/24/14	<p>In 2013, the Legislature passed Substitute Senate Bill 5264 directing the Department to amend WAC 296-52 to allow local law enforcement tactical response teams to store and transport explosive actuated tactical devices in accordance with the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) regulations and rulings.</p> <p>SSB 5264 specifically amended the Washington State Explosives Act to exclude the transportation and storage of explosive actuated tactical devices, including noise and flash diversionary devices, by:</p> <ul style="list-style-type: none"> <li>• local law enforcement tactical response teams, and</li> </ul>	This significant legislative rulemaking did not add additional costs to the agency's rulemaking process since a cost-benefit analysis and small business economic impact statement was not prepared due to an exemption under RCW 19.85.061. These changes were made to comply with Substitute Senate Bill 5264 (passed in 2013).

Department of Labor & Industries				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	Costs incurred by state agencies in complying with RCW 34.05.328
			<ul style="list-style-type: none"> <li>officers in law enforcement department-issued vehicles designated for use by tactical response teams and officers.</li> </ul> <p>The explosive devices must be stored and secured in compliance with regulations and rulings adopted by the ATF.</p>	
Temporary Worker Housing	WSR #15-13-092; Amended 19 WAC Sections, created 3 WAC Sections, and repealed 24 WAC Sections; WAC 296-307 Safety standards for agriculture WAC.	06/15/15	This rulemaking rewrote and clarified existing requirements in WAC 296-307 WAC Part L, Temporary worker housing and L-1, Cherry harvest camps and WAC 296-833-100, Temporary housing for workers, Scope. The Department of Labor and Industries (L&I) and the Department of Health (DOH) have joint rules for licensing, operation and inspection of temporary worker and cherry harvest housing as required by RCW 70.114A.065 and RCW 49.17.310 to enforce these rules. L&I consolidated the cherry harvest camp requirements in with temporary worker housing for cohesive purposes. Also, references, formatting and minor housekeeping changes were made throughout the chapters amended.	This significant legislative rulemaking imposed additional costs to the agency in terms of dollars and staff requirement. RCW 34.05.328 requires a formal cost-benefit analysis, in addition to a small business economic impact statement; as a result, the agency required additional staff time of its economists and assistant attorney generals to develop and review these analyses.
Lockout-Tagout	WSR #15-23-084; Amended 2 WAC	11/17/15	This rule adopted changes to WAC 296-78, Sawmill and woodworking operations, to	This significant legislative rulemaking did not add additional

Department of Labor & Industries				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	Costs incurred by state agencies in complying with RCW 34.05.328
for Sawmills	Sections; WAC 296-78-71503, Lockout-Tagout, WAC 296-78-550, First aid station.		match the general industry lockout requirements of WAC 296-803, Control of hazardous records. The changes were also adopted to be at least as effective as the Occupational Safety and Health Administration (OSHA) requirements located in 29 CFR 1910.147. An outdated link in WAC 296-78-550, First aid station, was also updated.	costs to the agency's rulemaking process since a cost-benefit analysis and small business economic impact statement was not prepared due to an exemption under RCW 19.85.061. These changes were made to comply with federal statute, 29 CFR 1910.147.
Factory Assembled Structures Rules Updates	WSR 16-01-163; Amended 15 WAC Sections; WAC 296-150M, Manufactured Homes	12/22/15	<p>The Factory Assembled Structures (FAS) program adopted amendments to sections of WAC 296-150M for Manufactured Homes. The program reviews the rules on a regular basis to ensure consistency with federal and national safety code requirements and industry standards, to clarify the existing rules, perform housekeeping, etc.</p> <p>Adopted amendments:</p> <ul style="list-style-type: none"> <li>• Adopt the latest code requirements and industry standards for manufactured and mobile homes in the state of Washington;</li> <li>• Amend the rules for clarity, to improve safety and reflect current processes, for example:</li> </ul>	This significant legislative rulemaking imposed additional costs to the agency in terms of dollars and staff requirement. RCW 34.05.328 requires a formal cost-benefit analysis, so the agency required additional staff time of its economists and assistant attorney generals to develop and review these analyses. Note: this rulemaking did not require a small business economic impact statement since the cost-benefit analysis determined the costs to business would be minor.

Department of Labor & Industries				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	Costs incurred by state agencies in complying with RCW 34.05.328
			<ul style="list-style-type: none"> <li>○ Allow the department to handle consumer complaints regarding manufactured homes;</li> <li>○ Process change for submittal of approved Fire Safety Certificates to the County Treasurer's Office, as opposed to the department; and</li> <li>○ Clarify that awnings and/or carports must be constructed without blocking egress doors or windows.</li> <li>● Update the rules for permits, insignia's, plan review, and inspections;</li> <li>● Amend language for consistency with statutory requirements; and</li> <li>● Amend language for general housekeeping, grammatical and reference corrections, etc.</li> </ul>	

**1. Extent to which compliance with RCW 34.05.328 affects the substance of the rule [from RCW 34.05.328 (6) (a)]:**

Compliance with this section did not affect the substance of the rule.

**2. Costs incurred by state agencies in complying with RCW 34.05.328 [from RCW 34.05.328 (6) (b)]:**

See table above.

**3. Information on any legal actions against agency for failure to comply with RCW 34.05.328, costs to the state of such action, and the result [from RCW 34.05.328 (6) (c)]:**

A petition for judicial review and declaratory judgement was filed on August 12, 2015, in Thurston County Superior Court challenging a provision in a rule adopted in 2012. According to the petition, the department exceeded its statutory authority in adopting rules for a statewide health care provider network in the workers' compensation system as required by 2011's Substitute Senate Bill 5801. Specifically, the petition challenges WAC 296-14-400, which states in part that reopening applications must be completed by network providers.

The case is ongoing so costs and results are not known at this time.

**4. Extent to which RCW 34.05.328 has adversely affected the capacity of the agency to fulfill its legislatively prescribed mission [from RCW 34.05.328 (6) (d)]:**

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

**5. Extent to which RCW 34.05.328 has improved the acceptability of state rules [from RCW 34.05.328 (6) (e)]:**

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

**6. Other relevant information in evaluating the effect of RCW 34.05.328 [from RCW 34.05.328 (6) (f)]:**

N/A

**7. General additions, response, comments and inclusions:**

No response entered.

## Department of Natural Resources

Department of Natural Resources			
Significant Legislative Rule Title	WSR #	Adoption Date	Description
Vessel Inspection Requirements for Ownership Transfer	CR-103 14-11-003 filed 5/7/14; CR-102 WSR #14-05-092 filed 2/19/14; CR-101 WSR #13-15-103 filed 7/22/13.	05/06/14	After July 1, 2014, owners of vessels more than sixty-five (65) feet in length and more than forty (40) years old must obtain a vessel inspection prior to transferring such vessels. Owners must provide a copy of the vessel inspection documentation to the transferee and the Washington State Department of Natural Resources prior to the ownership transfer. Owners who comply will avoid secondary liability if the vessel is later abandoned by the transferee or becomes derelict prior to a subsequent ownership transfer.
Geoduck Diver Safety Program	CR-101 WSR #14-05-098 filed 2/19/14; CR-102 WSR #14-09-107 filed 4/22/14; Supplemental CR-102 WSR #14-21-158 filed 10/21/14; Supplemental CR-102 WSR #15-04-138 filed 2/4/15; CR-103 WSR #15-18-012 filed 8/21/15.	08/18/15	Commercial geoduck harvesting techniques expose divers to a wide range of occupational health and safety hazards. 2SHB 1764 requires the Department of Natural Resources (DNR) to adopt rules establishing a geoduck diver safety program. The proposed rule establishes mandatory safety training requirements for all divers participating in the state managed wild-stock geoduck fishery. Mandated safety requirements are intended to mitigate the inherent hazards associated with working in hyperbaric conditions and reduce the probability of diver related accidents. Increased safety requirements will reduce risk exposure for geoduck divers, as well for other individuals that provide emergency response in the event of a dive related accident.

- 1. Extent to which compliance with RCW 34.05.328 affects the substance of the rule [from RCW 34.05.328 (6) (a)]:**  
RCW 34.05.328 does not affect the substance of the rule.
- 2. Costs incurred by state agencies in complying with RCW 34.05.328 [from RCW 34.05.328 (6) (b)]:**  
Staff time, cost of doing business.
- 3. Information on any legal actions against agency for failure to comply with RCW 34.05.328, costs to the state of such action, and the result [from RCW 34.05.328 (6) (c)]:**  
None.
- 4. Extent to which RCW 34.05.328 has adversely affected the capacity of the agency to fulfill its legislatively prescribed mission [from RCW 34.05.328 (6) (d)]:**  
RCW 34.05.328 has not adversely affected the capacity of the agency to fulfill its legislatively prescribed mission.
- 5. Extent to which RCW 34.05.328 has improved the acceptability of state rules [from RCW 34.05.328 (6) (e)]:**  
N/A
- 6. Other relevant information in evaluating the effect of RCW 34.05.328 [from RCW 34.05.328 (6) (f)]:**  
N/A
- 7. General additions, response, comments and inclusions:**  
No response entered.



## Department of Revenue

Department of Revenue			
Significant Legislative Rule Title	WSR #	Adoption Date	Description
WAC 458-40-660: Timber excise tax--Stumpage value tables	<p>Group 1: WSR #14-06-087; WSR #14-10-051; WSR #14-14-079</p> <p>Group 2: WSR #14-19-062; WSR #14-22-062; WSR #15-01-095</p> <p>Group 3: WSR #15-07-050; WSR #15-10-073; WSR #15-14-019</p> <p>Group 4: WSR #15-18-055; WSR #15-22-057; WSR #16-01-069</p>	<p>Group 1: 06/27/14</p> <p>Group 2: 12/17/14</p> <p>Group 3: 06/22/15</p> <p>Group 4: 12/14/15</p>	<p>RCW 84.33.091 requires that the Department publish stumpage value tables twice a year as the basis on which the timber excise tax is paid. The law also requires that the values represent fair market value and that the tables make allowances for differences in species, size, quality, and costs of removal, accessibility to point of conversion, market conditions, and all other relevant factors. The law also states that the values in the table should be based on gross proceeds either from sales of timber on the stump, or from sales of logs that are adjusted to reflect only the stumpage value, or a combination thereof.</p> <p>The objective of WAC 458-40-660 (stumpage value tables) is to supply a table that gives fair market value for timber on the stump that reflects all significant differences in value based on the criteria listed in the RCW for harvesters to file their timber excise tax.</p> <p>Twice each year the department adopts Rule 660. This rule is used by timber harvesters to calculate their timber excise tax liability. The data and calculations used have been negotiated between the timber industry and the Department. There are other ways of calculating the stumpage values and this is why the Department first designated this rule a significant legislative rule in 1996. We update the cost benefit analysis each time the rule is rewritten.</p>

**1. Extent to which compliance with RCW 34.05.328 affects the substance of the rule [from RCW 34.05.328 (6) (a)]:**

Generally, compliance with this section does not affect the substance of the rules the Department adopts.

**2. Costs incurred by state agencies in complying with RCW 34.05.328 [from RCW 34.05.328 (6) (b)]:**

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

**3. Information on any legal actions against agency for failure to comply with RCW 34.05.328, costs to the state of such action, and the result [from RCW 34.05.328 (6) (c)]:**

There have been no legal actions against the Department directly related to the use or nonuse of regulations associated with significant rules during this timeframe.

**4. Extent to which RCW 34.05.328 has adversely affected the capacity of the agency to fulfill its legislatively prescribed mission [from RCW 34.05.328 (6) (d)]:**

Generally, compliance with this section does not affect the Department's capacity to fulfill its legislatively prescribed mission. The large majority of the rules the Department adopts are interpretive.

**5. Extent to which RCW 34.05.328 has improved the acceptability of state rules [from RCW 34.05.328 (6) (e)]:**

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

**6. Other relevant information in evaluating the effect of RCW 34.05.328 [from RCW 34.05.328 (6) (f)].**

N/A

**7. General additions, response, comments, and inclusions:**

No response entered.

## Department of Social and Health Services

Department of Social and Health Services				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	General additions, response, comments and inclusions.
WACs 388-825, 388-829A, 388-829C: Background Check Requirements for Developmental Disabilities Administration	WSR #14-14-029	06/24/14	To consolidate the Secretary's list of Crimes & Negative Actions that disqualify persons from being a provider for children and vulnerable adults. Moving all Developmental Disability Administration (DDA) background check rules from the Background Check Central Unit rules (WAC 388-06) to DDA. Amendments were made to WAC 388-825 - Developmental Disabilities Services, WAC 388-829A - Alternative Living and WAC 388-829C - Companion Homes.	The rules provide clarity for individuals relating to compliance with RCW 74.39A.056, RCW 43.43.832, RCW 43.43.837 and RCW 74.18.123. Prior to consolidation of the list of disqualifying crimes and negative actions, and adoption of the amended rules, there was potential for confusion and required separate background checks for individuals if working form clients served by Developmental Disability Administration and Aging and Long-Term Support Administration.
WAC 388-78A: Background Checks Related with Adult Family Homes	WSR #14-14-031, filed 06/24/14	Adopted 06/24/14, effective 07/25/14	The primary purposes for these changes were to consolidate the Secretary's Lists of Crimes and Negative Actions that disqualify a person from being a provider for Home and Community Services, Residential Care Services and Developmental Disabilities Administration while also clarifying background check requirements. The consolidation provides better clarity	The disqualifying criminal convictions have been moved to a new WAC chapter, with pending changes added. This required amending the Residential Care Services WACs to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter, and to clarify amendments to the negative

Department of Social and Health Services				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	General additions, response, comments and inclusions.
			and understanding for the public and contracted entities, reduce the amount of WAC language and help preserve the health and safety of our clients.	actions. This will result in increased clarity and decreased confusion for providers.
WAC 388-76: Background Check Requirements Related to Adult Family Homes	WSR #14-14-028	Adopted 06/24/14, effective 07/25/14	Consolidate the Secretary's list of List of Crimes & Negative Actions that disqualify persons from being a provider for Home & Community Services, Residential Care Services (RCS) and Developmental Disabilities Administration while also clarifying background check requirements.	Changes support the health & safety of residents living in residential settings, provides a uniform background check standard for all caregivers, and reduction of overall costs to process background checks. The disqualifying criminal convictions have been moved to a new WAC chapter with pending charges added. This required amending the RCS WACs to remove the disqualifying crimes from each applicable section, amending the language to support the reference to the new WAC chapter and clarify amendments to the negative actions. The result is increased clarity and decreased confusion for providers.
WAC 388-101: Background Check	WSR #14-14-030, filed 06/24/14	Adopted 06/24/14,	Consolidate the Secretary's List of Crimes and Negative Actions that	Changes align disqualifying criminal history standards. The disqualifying

Department of Social and Health Services				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	General additions, response, comments and inclusions.
Requirements related to Certified Community Residential Services		effective 07/25/14	qualify persons from being a provider for Home and Community Services, Residential Care Services (RCS) and Developmental Disabilities Administration while also clarifying background check requirements. The consolidation provides better clarity and understanding for the public and contracted entities, reduces the amount of WAC language and helps preserve the safety & health of our clients.	criminal convictions have been moved to a new WAC chapter with pending charges added. This required amending RCS WACs to remove disqualifying crimes from each applicable section, amend the language to support the references to the new WAC chapter, and clarify amendments to the negative actions. Amendments also created grandfathering language for workers hired and qualified prior to implementation of new standards for all but the most egregious crimes.
WAC 388-97: Consolidating the Secretary's List of Crimes and Negative Actions	WSR #14-14-027, filed 06/24/14.	Adopted 06/24/14 and effective 07/25/14.	The amendments include aligning disqualifying criminal history standards with Aging and Long-Term Support Administration (AL TSA), the disqualifying criminal convictions have been moved to a new chapter with pending charges added. This requires amending residential care facilities WACs to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter and to clarify	The department amended these rules to support: 1) The health and safety of residents living in residential settings, 2) the consolidation of various Secretary's Lists in AL TSA into new WAC chapter that provides a uniform background check standard for all caregivers, and 3) the reduction for overall costs to process background checks.  The disqualifying criminal

Department of Social and Health Services				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	General additions, response, comments and inclusions.
			amendments to the negative actions.	convictions have been moved to a new WAC chapter, with pending charges added. This requires the amending of the Residential Care Services WACs to remove the disqualifying crimes from each applicable section, amend the language to support the reference to the new WAC chapter and clarify amendments to the negative actions. This results in increased clarity and decreased confusion for providers.
WAC 388-78 and WAC 388-113: Background Check Requirements	WSR #14-14-025, filed 06/24/14	Adopted 06/24/14, effective 07/25/15	Amendments to Home & Community Programs and Disqualifying Crimes and Negative Actions. Consolidate background check rules and implement uniform criminal history standards between Aging & Long-Term Support Administration and the Developmental Disabilities Administration which frequently use the same settings and provider pool.	Aligning disqualifying criminal history standards and creating grandfathering language for workers hired and qualified prior to implementation of new standards, for all but the most egregious crimes. These rule changes were driven in part by demand from businesses and support the health and safety of clients. Consolidating the various DSHS Secretary's lists of crimes & negative actions provides a uniform background check for all caregivers. Drafts were shared with stakeholders and the final rules

Department of Social and Health Services				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	General additions, response, comments and inclusions.
				reflect input received.
WAC 388-107: Licensing Requirements for Enhanced Services Facilities	WSR #14-19-071, filed 09/12/14	Adopted 9/11/14, effective 10/13/14	The department adopted these rules as a result of 3ESSB 5034. The legislature directed that residents be placed in enhanced services facilities.	Establishes licensing requirements for enhanced services facilities, which is a long-term care facility type established by RCW 70.97 and funded by the 2013 legislature. Facilities must meet specific building physical plant requirements, may have up to sixteen residents, are required to report abuse and neglect, residents have specific rights, required trainings and credentials for staff providing direct care and services, background checks required.
WACs 388-877, 388-877A and 388-877B; WAC 388-865-0511: Licensing Behavioral Health Agencies	WSR #14-18-014, filed 08/22/14	Adopted 08/22/14. Effective 09/22/14.	Updated sections contain the Department's new rules for licensing agencies as behavioral health agencies and certifying the behavioral health services the agencies choose to provide.	Some of the amendments respond and make changes due to comments received from stakeholders and provide clarification, correct cross references.
WACs 388-145, 388-147, 388-148 and 388-160; new and repealed: Licensing Requirements for Foster Homes,	WSR #15-01-069, filed 12/11/14	Adopted 12/11/14, effective 01/11/15	Licensing requirements for Child Foster Homes, Group Care Facilities, Child Placing Agencies and Adoption Centers. New chapters are specific to license type, providing foster parents a stand-alone chapter specific to	Licensed foster parents, child-placing agencies, adoption centers and group care facilities may be impacted by these requirements. Group care facilities include Semi-secure and Secure Crisis Residential

Department of Social and Health Services				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	General additions, response, comments and inclusions.
Group Care Facilities, Child Placing Agencies and Adoption Centers			foster home licensing. Single clearly defined chapters will assist stakeholders with accessing requirements specific to their license type.	Centers, Emergency Respite Centers, Group Homes, Group Receiving Centers, Overnight Youth Shelters, Resource and Assessment Centers and Staffed Residential Homes. Services provided by these license types include services to Medically Fragile, and Intellectual and Developmental disabilities, Pregnant and Parenting Youth and Maternity Services, and Day Treatment Services. This rulemaking improves clarity of rules for each license category.
WAC 388-03: Certification of DSHS Spoken Language Interpreters, Translators, Employees and Licensed Agency Personnel	WSR #15-07-008, filed 03/06/15	Adopted 03/6/15, effective 04/06/15	Establishes the process and procedures in implementing the goals of RCW 74.04.025 to certify/authorize language interpreters/translators to ensure quality services to the limited-English proficient (LEP) clients; Title VI of the Civil Rights Act of 1964, to prohibit discrimination against recipients of federally funded programs. 45 CFR requires that recipients of federal financial assistance from HHS take reasonable steps to provide	Rules also implement agreements reached between OFM and WFSE/AFSCME, specify & implement interpreter pre-certification training requirements, specify & implement interpreter post-certification procedures. Also, address recommendations from internal and external stakeholders, and reflect the name change of the interpreter program.



Department of Social and Health Services				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	General additions, response, comments and inclusions.
			meaningful access to LEP persons.	
WACs 388-61A-0220, 388-61A-0350 and 388-61A-0360: Standards for Domestic Violence Shelters	WSR #15-14-033, filed 06/23/15	Adopted 06/22/15, effective 07/24/15	Provides uniform statewide standards for domestic violence shelters and supportive services funded by DSHS. Standards address issues such as adequate food, clothing, emergency housing, safety, security and advocacy. The amendments revise the training requirements for advocates & advocate supervisors.	Rulemaking stakeholder process included the 43 emergency domestic violence shelter agencies that DSHS currently contracts with. It also included the Washington State Coalition Against Domestic Violence (WSCADV). Forty-two of the domestic violence shelter agencies are members of WSCADV. DSHS contracted with WSCADV to survey its membership on the advocate training required by WAC 388-61A. The survey received an excellent response. Respondents represented urban/rural communities, eastern/western Washington; directors/managers, and direct service workers, and included staff who had varying lengths of employment.
WAC 388-877A: Outpatient Mental Health Services	WSR #15-14-058, filed 06/25/15	Adopted 06/25/15, effective 07/26/15	Informs individuals applying for, eligible for re receiving mental health services of their right to express dissatisfaction regarding mental health services and how to use the Regional Support Network's	This rule-making also updates and clarifies individual rights specific to the Medicaid program and repeals outdated rules

Department of Social and Health Services				
Significant Legislative Rule Title	WSR #	Adoption Date	Description	General additions, response, comments and inclusions.
			grievance system. The rules inform consumers of behavioral health services how to use the Division of Behavioral Health and Recovery's complain process and update and clarify individual rights specific to the Medicaid program. The department is repealing WAC 388-865-0255 that is outdated due to the adoption of these new rules.	

**1. Extent to which compliance with RCW 34.05.328 affects the substance of the rule [from RCW 34.05.328 (6) (a)]:**

N/A

**2. Costs incurred by state agencies in complying with RCW 34.05.328 [from RCW 34.05.328 (6) (b)]:**

Staff time, cost of doing business.

**3. Information on any legal actions against agency for failure to comply with RCW 34.05.328, costs to the state of such action, and the result [from RCW 34.05.328 (6) (c)]:**

N/A

**4. Extent to which RCW 34.05.328 has adversely affected the capacity of the agency to fulfill its legislatively prescribed mission [from RCW 34.05.328 (6) (d)]:**

N/A

**5. Extent to which RCW 34.05.328 has improved the acceptability of state rules [from RCW 34.05.328 (6) (e)]:**

N/A

**6. Other relevant information in evaluating the effect of RCW 34.05.328 [from RCW 34.05.328 (6) (f)]:**

N/A

**7. General additions, response, comments and inclusions:**

No response entered.

## Forest Practices Board

Forest Practices Board			
Significant Legislative Rule Title	WSR #	Adoption Date	Description
Unstable Slopes Information in Forest Practices Applications	WSR #15-06-037	02/10/14	Amended WACs 222-10-030 and 222-20-010 to inform prospective applicants that the DNR may require additional information, including additional geologic information, when reviewing Forest Practices Applications.
Forest Practices Hydraulic Project (FPHP) and Forest Biomass	WSR #13-21-032	08/13/13	Amended WACs 222-12, 222-16, 222-20, 222-24, 222-30, and 222-50 to 1) implement 2012 legislation (2ESSB 6406) by incorporating into the forest practices rules the fish protection standards from the hydraulic code rules that are applicable to activities regulated under the forest practices rules, and 2) implement August 2012 recommendations of the Forest Practices Biomass Working Group by adding a definition of "forest biomass" and adding clarifying language in WACs 222-16-010 and 222-30-020.

**1. Extent to which compliance with RCW 34.05.328 affects the substance of the rule [from RCW 34.05.328 (6) (a)]:**

None.

**2. Costs incurred by state agencies in complying with RCW 34.05.328 [from RCW 34.05.328 (6) (b)]:**

Costs were associated with staff time in planning and implementing the requirements under this section.

**3. Information on any legal actions against agency for failure to comply with RCW 34.05.328, costs to the state of such action, and the result [from RCW 34.05.328 (6) (c)]:**

None.

**4. Extent to which RCW 34.05.328 has adversely affected the capacity of the agency to fulfill its legislatively prescribed mission [from RCW 34.05.328 (6) (d)]:**

None.

**5. Extent to which RCW 34.05.328 has improved the acceptability of state rules [from RCW 34.05.328 (6) (e)]:**

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

**6. Other relevant information in evaluating the effect of RCW 34.05.328 [from RCW 34.05.328 (6) (f)]:**

None.

**7. General additions, response, comments, and inclusions:**

No response entered.

## Office of the Insurance Commissioner

Office of the Insurance Commissioner			
Significant Legislative Rule Title	WSR # and other references	Adoption Date	Rule Description
Charitable Gift Annuities Filings	WSR #14-05-017; R2013-24	Adoption: 02/10/14; Effective 03/15/14	The new rule will require organizations that hold a certificate from the Commissioner to issue charitable gift annuities to file their financial and related statements with the Commissioner electronically rather than by paper. The new rule will also require these organizations to file their gift annuity contracts electronically with the Commissioner using the SERFF system.
Non-Substitution Of Essential Health Benefits In Individual And Small Group Plans	WSR #14-06-069; R2013-28	Adopted: 03/03/14	This rule extends the deadline for filings through 2016 for issuers to not substitute essential health benefits that differ from a benefit or benefits in the benchmark plan within a category in individual and small group health plans.
Plan Management For Individual, Small And Large-Group Health Coverage Markets	WSR #14-07-047; R2013-27	03/13/14	This new rule allows the commissioner to set filing deadlines to file with the commissioner rate and form filings for all individual health plans, small group health plans, and stand-alone dental plans that provide pediatric dental benefits as one of the essential health benefits. This will ensure that these plans are filed timely for review.
Stand Alone Dental Insurance Plans	WSR #14-09-080; R2013-19	04/18/14	This new rule allows health benefit plans to have optional plan designs that are compliant with the Affordable Care Act and include pediatric dental benefits as one of the ten essential health benefit designs.

Office of the Insurance Commissioner			
Significant Legislative Rule Title	WSR # and other references	Adoption Date	Rule Description
Health Insurance Provider Networks	WSR #14-10-017; R2013-22	04/25/14	<p>Both qualified health plans and health plans offered outside of the Exchange must have networks that at a minimum ensure access to covered services without unreasonable delay and address the specific needs of the populations served.</p> <p>Clarification of the provider network criteria in these areas is needed to support issuer filings, including written guidance regarding the commissioner's review standards for provider networks in general and the inclusion of essential community providers in networks for qualified health plans. The rule also includes requirements for provider directories and creates a more transparent process for the building and maintenance of provider networks.</p>
Title Insurance Rates	WSR #14-10-056; R2013-15	05/02/14	<ol style="list-style-type: none"> <li>1) Identify the information that title insurers and title insurance agents must submit to the statistical reporting agent designated by the Commissioner and the process for submitting the information.</li> <li>2) Establish how the costs and expenses of the statistical reporting agent and any examination of the statistical reporting agent will be apportioned by and among the title insurers and title insurance agents.</li> <li>3) Amend the existing rules regarding information required for the filing of rates for title insurance under RCW 48.29.147.</li> <li>4) Amend the existing rules regarding the standards that title insurance rate filings must satisfy under RCW 48.29.147, and</li> <li>5) Amend the existing rule establishing a date by which title insurers must file every manual of rules and rates, rating</li> </ol>

Office of the Insurance Commissioner			
Significant Legislative Rule Title	WSR # and other references	Adoption Date	Rule Description
			plan, rate schedule, minimum rate, class rate, and rating rule, and every modification of any of these filings, under RCW 48.29.143 and RCW 48.29.147
Essential Health Benefits transplant waiting period	WSR #14-15-012; R2014-03	07/03/14	The purpose of this rule is to remove the waiting period for transplant services and treatment. This will bring the essential health benefit rule into compliance with federal law and regulation relating to the treatment of pre-existing conditions and discrimination in providing health insurance coverage.
Filing of Financial Statements And Related Filings Electronically	WSR #14-15-149; R2013-25	07/23/14	These rules amend the rules regarding the filing of financial and related filings by Washington domestic insurance companies, health care service contractors, health maintenance organizations, and self-funded multiple employer welfare arrangements to require that their financial and related statements only be filed electronically with the NAIC and for those related filings that the NAIC does not accept, these entities must file the statements electronically with the Commissioner. When the filings have been made with the NAIC, the Commissioner will deem the statements to have been filed with the Commissioner.
Sharing Of Commissions And Referral Fees	WSR #14-17-026; R2012-16	08/12/14	The rule will provide guidance to licensed insurance producers as to what may or may not constitute sharing commissions with non-licensed persons.
Investment In Hedging And Income Generation Derivative Transactions By Insurers	WSR #14-21-106; R2014-05	10/15/14	Establish rules for investment in hedging and income generation derivative transactions by insurers and approval by the Commissioner of derivative use plans of insurers.



Office of the Insurance Commissioner			
Significant Legislative Rule Title	WSR # and other references	Adoption Date	Rule Description
Life Insurance Policies' Minimum Death Benefit	WSR #14-21-178; R2013-26	10/22/14	The rule amends WAC 284-23-550 to provide for a variable interest rate to be paid by the insurer based upon current interest rates, rather than a set rate. The rule also amends WAC 284-23-550 to provide that it does not apply to policies with a death benefit of more than \$5,000 rather than \$25,000.
FAIR (Fair Access to Insurance Requirements) Plan representation	WSR #14-21-179; R2014-06	10/22/14	This rule amends the existing rule regarding the composition of the governing committee of the FAIR Plan
Mental Health and Substance Abuse Disorder Parity Requirements	WSR #14-23-057; R2012-29	11/17/14	<p>This new rule consolidates existing state mental health and chemical dependency insurance regulations, incorporates the Affordable Care Act (ACA) (Pub. L. 111-148, as amended), and the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) (Pub. L. 110-343) and repeals WAC 284-53.</p> <p>The new rule provides health carriers (issuers) with instructions on how to perform a parity analysis for provisions relating to financial requirements, treatment limitations, and non-quantitative treatment limitations. Compliance is demonstrated by filing supporting documentation used to make parity analysis decisions. In addition, special disclosure requirements apply to obtain reasons for a claim denial.</p>
Pediatric Vision Screening	WSR #14-23-092; R2014-04	11/19/14	This rule revision is a clarification of an essential health benefit as specified in the Affordable Care Act. The rulemaking on essential health benefits defined pediatric vision screening as "Routine vision screening and eye exam for children, including dilation as professionally indicated, and with refraction every calendar year." Under the current definition, when a pediatrician bills for

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			an eye screening, this exhausts the annual insurance benefit for a comprehensive pediatric eye exam even though the child didn't receive one. Clarifying which services are included in a pediatric vision screening should prevent this problem from occurring in the future.
Fraternal Benefit Society Risk-based Surplus (RBS) standards	WSR #15-03-003; R2014-12	01/07/15	Amendment of existing rules to change the trend test for Fraternal Benefit Societies used to compute their RBS to comport with NAIC model laws.
Designation of a Designated Responsible Licensed Person (DRLP) by a business	WSR #15-05-054; R2014-07	02/13/15	Rules to ensure that the Designated Responsible Licensed Person (DRLP) of an insurance producer entity has sufficient authority and information to act in the capacity of a DRLP.
Insurance producer continuing education (CE) requirements	WSR #15-13-061; R2014-02	06/10/15	This rule adds new definitions and processes to WAC 284-17 for continuing education, and amends and removes some existing sections of WAC 284-17 to provide increased clarity and to bring the rules in line with current OIC procedures.
Essential Health Benefits: Designation of Benchmark Plan For 2017 And Any Supplementation	WSR 15-20-042; R2015-02	09/29/16; this rule became effective immediately	<p>The U.S. Department of Health and Human Services ("HHS") decided to extend the base-benchmark approach for establishing Essential Health Benefit coverage levels through at least plan year 2017. As part of this process, HHS required each state to identify a new base-benchmark plan and to update its Essential Health Benefits rule, which applies to fully insured small group and individual health plans. To comply with these requirements, the Office of the Insurance Commissioner ("OIC") identified a new base-benchmark plan in May 2015 through emergency rulemaking.</p> <p>This rule finalizes the new base-benchmark plan selection and</p>

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			makes necessary changes to the Essential Health Benefits rule to bring the rule into compliance with changes that have occurred since the OIC originally adopted it in 2013.
Attestation Requirements Regarding Consumer Transparency Tools For Health Care Cost And Quality	WSR#15-21-095; R2015-03	10/21/15	This rule gives health insurers in Washington state guidelines for their member-transparency attestation(s) to the Office of the Insurance Commissioner. Insurers must verify that their member-transparency tools meet the requirements of RCW 48.43.007 (adopted in 2014) and are accessible from their secured website's home page.
Adoption Of Rules Implementing the Holding Company Act, Chapter 122- Laws of 2015	WSR #15-22-062; R2015-05	Filing date: 10/30/15; becomes effective 01/01/16	These rules amend the existing Holding Company Regulation, WAC 284-18 and other WAC sections to conform to the NAIC Model Holding Company Regulation and amendments to the Insurer Holding Company Act made by legislation during the 2015 legislative session. In addition since the legislation repealed chapter RCW 48.31C and provided that the entities regulated by this chapter would now be regulated under chapter RCW 48.31B, the rule repeals chapter WAC 284-18A.
Network Access Maintenance Standards	WSR #16-01-074; R2014-08	Final adoption 12/14/15	Based on the significant changes in health care delivery and access to care occurring after January 1, 2014 due to health care reform, the commissioner determined that further updating of regulations regarding these topics is reasonable and necessary. Clarification of the provider network maintenance and contracting is needed to support issuer filings.
Prior Authorization Of Pharmacy Benefits	WSR# 15-24-074; R2014-13	Adoption date: 11/30/15.	These rules are required by RCW 48.165.0301 (ESSB 6511) to improve the prior authorization process within the pharmacy benefit. The rules implement the recommendations of a work

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		Effective date: 07/01/16.	group convened by OneHealthPort, the lead organization designated by the legislature. The work group examined the prior authorization process and made recommendations to streamline the process. The work group considered those issues identified in SB 6511 and focused its initial efforts on pharmacy. Information regarding the work group is available on OneHealthPort's website ( <a href="http://www.onehealthport.com">www.onehealthport.com</a> ).
Sharing of Commissions by Licensed Insurance Producers	WSR 16-01-024; R2015-07	12/07/15	To conform with a new state law passed in 2015 about sharing commissions (ESSB 5743), the commissioner adopted new and amended rules concerning insurance producers' use of rebates and inducements (and repealed 3 existing rules that were based on earlier legislation).
Requiring Each Carrier and Health Plan To Enter Independent Review Organization (IRO) Final Decision Determination Information Into The Commissioner's IRO On-Line Database	WSR# 15-24-072; R2015-12	Adoption date: 11/30/15	Washington's current IRO system does not allow for accessible and usable IRO decision information; consistency in the review process; or effective oversight, enforcement, and regulation of the IRO process. This proposed rule adds new language to WAC 284-43, requiring each carrier and health plan to submit final IRO decision-determination information to the Office of the Insurance Commissioner's online database within 3 days of receipt of the IRO's final decision. Data requirements for such decision-determination information will also be published when the rule is effective.

**1. Extent to which compliance with RCW 34.05.328 affects the substance of the rule [from RCW 34.05.328 (6) (a)]:**

The Office of the Insurance Commissioner submits this report to assist the Office of Regulatory Affairs in preparing the 2016 report required by RCW 34.05.328(6). We submitted our last report in early 2014. We have adopted 24 rules between January 1, 2014 and December 31,

2015 that we determined are “significant legislative rules.” The significant legislative rule requirements add approximately \$225,000 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.

**2. Costs incurred by state agencies in complying with RCW 34.05.328 [from RCW 34.05.328 (6) (b)]:**

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

Analyst effort:	1.6 FTE	approximately \$180,000 annually
LISTSERV and Website maintenance:	0.5 FTE	approximately \$45,000 annually

Because the analysis must be done on each rule, staff time for rulemaking 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 rulemaking is longer due to the additional steps.

By eliminating U.S. mailing of rule filings in 2011 and using electronic distribution through our list-serve and email to regulated industry contacts and interested stakeholders we have reduced these costs to nearly zero. However, staff devoted to website maintenance has climbed as stakeholders have shown increased interest in stakeholder drafts (pre-CR102) and gaining more information regarding the comments of other stakeholders.

**3. Information on any legal actions against agency for failure to comply with RCW 34.05.328, costs to the state of such action, and the result [from RCW 34.05.328 (6) (c)]:**

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.

**4. Extent to which RCW 34.05.328 has adversely affected the capacity of the agency to fulfill its legislatively prescribed mission [from RCW 34.05.328 (6) (d)]:**

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

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

2. *Reduced Ability to Respond to Changing Circumstances:* Because rulemaking takes longer to complete in order to ensure compliance with RCW 34.05.328, the agency must use emergency rules followed by permanent rulemaking 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. Fortunately, most of the emergency rulemaking necessary to keep up with health reform changes has subsided. In 2014 and 2015 OIC adopted three emergency rules.
3. *Limits on Number of Rules under Development:* We try to 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.

**5. Extent to which RCW 34.05.328 has improved the acceptability of state rules [from RCW 34.05.328 (6) (e)]:**

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

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

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

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

**6. Other relevant information in evaluating the effect of RCW 34.05.328 [from RCW 34.05.328 (6) (f)]:**

RCW 34.05.328 probably improves rule quality for agencies that do not engage in rulemaking as a regular practice, because the analysis it requires supports the development of good rules. Without the statutory requirement, rule writers probably would attempt the analysis, but

without specialized expertise, and would not routinely access related data to support the analysis. The cost-benefit assessment would most likely be anecdotal.

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

One of our goals is to increase the use of the relevant and most reliable data to support our initial assessment of rule proposals, so that rules reflect what we learn from the data. This supports the agency mission because the Commissioner regulates to both protect consumers and ensure a financially sound insurance marketplace in Washington.

#### 7. General additions, response, comments and inclusions:

The table below lists, in approximately the order adopted, the rules proposed that were deemed significant legislative rules.

Name of Rule	New (section)	Amended (section)	Repealed (section)
<b>Charitable gift annuities filings</b>	8	0	0
<b>Non-Substitution of essential health benefits in individual and small group plans</b>	0	1	0
<b>Plan management for individual, small and large-group health coverage markets</b>	0	1	0
<b>Stand alone dental insurance plans</b>	3	1	0
<b>Health Insurance Provider Networks</b>	8	6	1
<b>Title Insurance Rates</b>	3	6	0
<b>Essential Health Benefits transplant waiting period</b>	0	1	0
<b>Filing of financial statements and related filings electronically</b>	0	6	0
<b>Sharing of commissions and referral fees</b>	4	0	0

<b>Name of Rule</b>	<b>New (section)</b>	<b>Amended (section)</b>	<b>Repealed (section)</b>
<b>Investment in hedging and income generation derivative transactions by insurers</b>	7	0	0
<b>Life insurance policies' minimum death benefit</b>	0	1	0
<b>FAIR (Fair Access to Insurance Requirements) Plan representation</b>	0	1	0
<b>Mental Health and substance abuse disorder parity requirements</b>	8	0	2
<b>Pediatric Vision Screening</b>	0	1	0
<b>Fraternal Benefit Society Risk-based Surplus (RBS) standards</b>	0	1	0
<b>Designation of a Designated Responsible Licensed Person (DRLP) by a business</b>	1	0	0
<b>Insurance producer continuing education (CE) requirements</b>	7	22	3
<b>Essential Health Benefits: Designation of benchmark plan for 2017 and any supplementation</b>	5	5	0
<b>Attestation requirements regarding consumer transparency tools for health care cost and quality</b>	1	0	0
<b>Adoption of rules implementing the Holding Company Act, Chapter 122-Laws of 2015</b>	6	24	21
<b>Network Access maintenance standards</b>	2	5	0
<b>Prior authorization of pharmacy benefits</b>	2	3	0
<b>Sharing of Commissions by Licensed Insurance Producers</b>	3	0	3
<b>Requiring each carrier and health plan to enter Independent Review Organization (IRO) final decision determination information into the Commissioner's IRO on-line database</b>	0	2	0



Name of Rule	New (section)	Amended (section)	Repealed (section)
<b>Totals:</b> <b>Number of rules: 24</b>	68	87	30

The Commissioner's approach to rulemaking 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).