

WASHINGTON STATE
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Prepared for Oct 11, 2006
Reclaimed Water Rule
Advisory Committee Meeting

Rule Development

Rule-making 101

Developing Agency Rules

- **Administrative Procedure Act** (Chapter 34.05 RCW)
 - Several “Parts”

- **3 Major Groups**
 - Public Access to Agency Rules
 - Judicial and Legislative Review
 - Rule-making Procedures



Administrative Procedure Act

■ Focus on 3 of the Parts:

- “Court-System” Review
- Legislative Review
- Rule-making Procedures



“Court System” Review

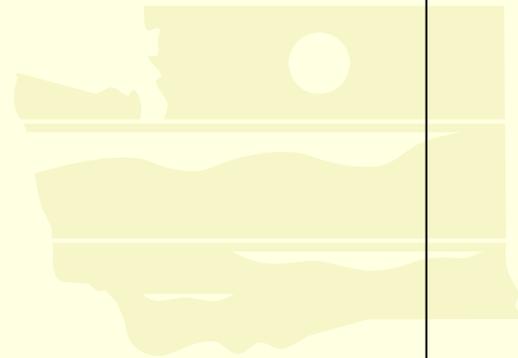
- **Adjudicative Proceedings**
- **Judicial Review (and Civil Enforcement)**



Adjudicative Proceedings (Part IV)

34.05.410 - Application of Part IV.

(2) RCW 34.05.410 through 34.05.494
**do not apply to rule-making
proceedings unless another statute
expressly so requires.**



Judicial Review

(Part V)

RCW 34.05.570-(2)(c) In a proceeding involving review of a rule, the court shall declare the rule **invalid only if** it finds that:

- the rule **violates constitutional** provisions;
- the rule **exceeds the statutory authority** of the agency;
- the rule was **adopted without compliance** with statutory rule-making procedures; or
- the rule is **arbitrary and capricious.**



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Legislative Review

(Part VI)

RCW 34.05.620- Proposed Rules

■ Focus on:

- Violates the **intent of the legislature** (statute);
or
- Agency **may not be adopting a proposed rule** in accordance with all applicable provisions of law.

■ Committee Notifies Agency

- In writing of its decision and reasons;
- Agency must consider committee's decision.



Legislative Review

RCW 34.05.630 - Existing Rules

■ Selective Review

■ Focus on:

- **intent of the legislature** as expressed by the statute which the rule implements,
- that the rule has **not been adopted** in accordance with all applicable provisions of law,
- **or that an agency is using a policy or interpretive statement in place of a rule.**

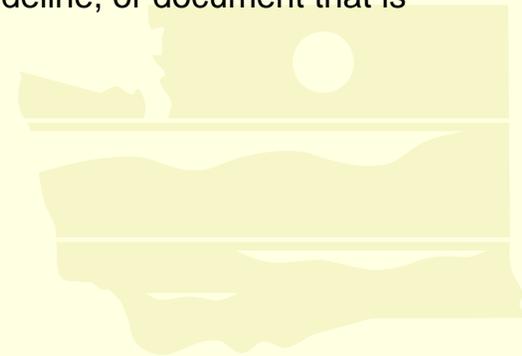
Legislative Review

■ Committee notifies the Agency

- Agency files notice of a hearing on the findings,
- mail notice to all persons who have made timely request of the agency for advance notice of its rule-making proceedings,
- the notice includes the rules review committee's findings and reasons and be in the Washington state register.

■ The Agency fully considers all written and oral submissions

- (a) whether the rule in question is within the intent of the legislature as expressed by the statute which the rule implements,
- (b) whether the rule was adopted in accordance with all applicable provisions of law, and
- (c) whether the agency is using a policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent, in place of a rule.



RULE-MAKING PROCEDURES

(PART III)

[34.05.310](#) Prenotice inquiry -- Negotiated and pilot rules. [34.05.312](#) Rules coordinator. [34.05.313](#) Feasibility studies -- Pilot projects. [34.05.314](#) Rules development agenda. [34.05.315](#) Rule-making docket. [34.05.320](#) Notice of proposed rule -- Contents -- Distribution by agency -- Institutions of higher education. [34.05.322](#) Scope of rule-making authority. [34.05.325](#) Public participation -- Concise explanatory statement. [34.05.328](#) Significant legislative rules, other selected rules. [34.05.330](#) Petition for adoption, amendment, repeal -- Agency action -- Appeal. [34.05.335](#) Withdrawal of proposal -- Time and manner of adoption. [34.05.340](#) Variance between proposed and final rule. [34.05.345](#) Failure to give twenty days notice of intended action -- Effect. [34.05.350](#) Emergency rules and amendments. [34.05.353](#) Expedited rule making. [34.05.360](#) Order adopting rule, contents. [34.05.362](#) Postadoption notice. [34.05.365](#) Incorporation by reference. [34.05.370](#) Rule-making file. [34.05.375](#) Substantial compliance with procedures. [34.05.380](#) Filing with code reviser -- Register -- Effective dates. [34.05.385](#) Rules for rule making. [34.05.390](#) Style, format, and numbering -- Agency compliance. [34.05.395](#) Format and style of amendatory and new sections -- Failure to comply.



General Requirements

■ Many General Requirements

- Rulemaking File
- Regulatory Fairness Act Analysis
 - Small Business Economic Impact Statement
- Public Participation and Concise Explanatory Statement
- Differences between Proposed and Final Rule
- Incorporation by reference



Types of Rules

- **Emergency**

- Short time frame

- **Negotiated**

- **Pilot**



Types of Rules

■ Interpretative

- No expectation of enforcement (penalty)

■ Procedural

- Agency hearings
- Application filing or related process requirement
- Policy statement on consistent internal operations

■ Significant Legislative



Significant Legislative Rules

RCW 34.05.328- Significant legislative rules, other selected rules.

- Section 5 -Applies to Specific Departments
 - Ecology
 - Health

- Several Determinations
 - Goal of statute



Significant Legislative Rules

■ Several Determinations

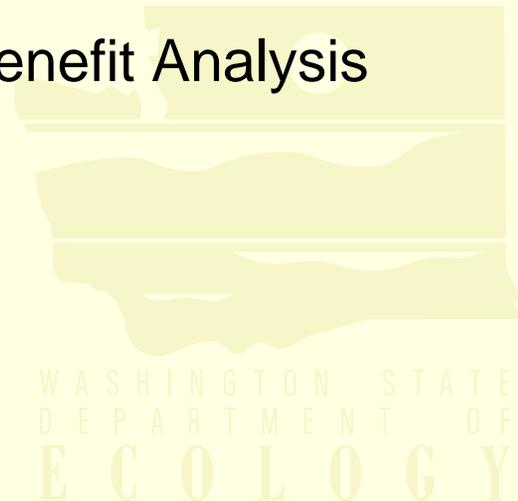
- A rule is **needed** and alternatives considered, consequences of no-rule outlined;



Significant Legislative Rules

■ Several Determinations

- Determine that the **probable benefits of the rule are greater than its probable costs**
 - taking into account both the qualitative and quantitative benefits and costs and
 - the specific directives of the statute being implemented;
- Provide notice of Preliminary Cost and Benefit Analysis available;



Significant Legislative Rules

■ Several Determinations

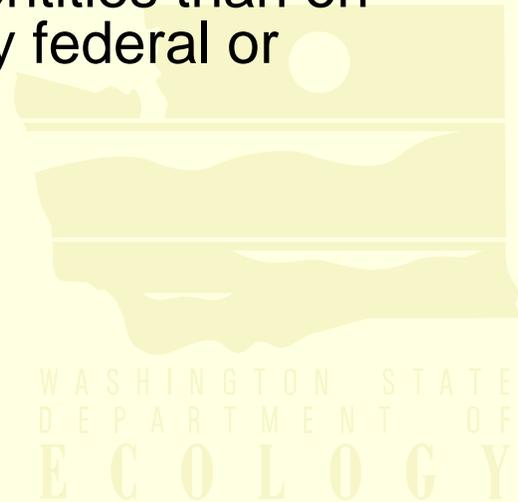
- Determine, after considering alternative versions of the rule and the analysis required under the rule being adopted is the **least burdensome alternative** for those required to comply with it that will achieve the general goals and specific objectives.



Significant Legislative Rules

■ Several Determinations

- Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law;
- Determine that the rule does not impose more **stringent performance requirements** on private entities than on public entities unless required to do so by federal or state law..



Significant Legislative Rules

■ Agency Documents the Determinations

RCW 34.05.328(2)

- the agency shall place in the rule-making file
- **documentation of sufficient quantity and quality**
- to persuade a reasonable person that the determinations are justified.



Significant Legislative Rules

Before Adopting a Rule

- Agency places in rule-file an implementation plan.
 - (a) Implement and enforce the rule, including a description of the resources the agency intends to use;
 - (b) Inform and educate affected persons about the rule;
 - (c) Promote and assist voluntary compliance; and
 - (d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.



Significant Legislative Rules

After Adopting a rule

- Provide to the *business assistance center a reference list (other entities regulating same subject)
- Coordinate implementation and enforcement of the rule implementation and enforcement.
(specific choices)



Significant Legislative Rules

After Adopting a rule

- If the agency is unable to comply-Report to the joint administrative rules review committee:
 - (i) The existence of any overlap or duplication(federal to state laws, and any known overlap, duplication, or conflict with local laws; and
 - (ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.



Rule Process Table



File CR-101	Public Participate	Public Participate	Public Participate	File CR-102	Hearing	Post Hearing	Final Lang	Make Decision to Adopt	File CR-103	Adopt Notice	Rule
	Advisory Committee Work	Draft of WAC	Advisory Committee Work	Prelim Cost and Benefit Analysis & Least Burden some Analysis	Published in WA State Register	CES Implementation Plan	OTS		Final Cost and Benefit & Least Burden some	Send out	31 days Later
		Panel Work-Shops Road shows	Changes to Draft Lang	SBEIS SEPA							
	Interim Report #1		Interim Report #2	2 weeks	180 day Clock				Dec 31, 2010		

Questions?

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Reclaimed Water Rule Advisory
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So Where Do We Go From Here?

- Rule – Chapter 173-219 WAC
- Implementation Guidance
 - Design Criteria – Orange Book
 - Permit Writer's Manual



How Do We Get There?

- Topics of Interest
- Create a list
- Prioritize

