

ECOLOGY 2020 RULEMAKING COST ASSUMPTIONS

Internal Memo, November 2019

Purpose

This memo details agency cost assumptions related to rulemaking and is intended to be used as a guide for fiscal notes and policy analysis during the 2020 Legislative Session. Estimates and standard costs in this document reflect common situations and were created by reviewing recent rulemakings and working with rulemaking staff in Ecology's various environmental programs.

Analysts should note that highly complex and unique rulemakings may deviate from our situational assumptions, but would likely see costs similar to the standard assumptions for staff, infrastructure, public meetings, and the like. We encourage analysts to reach out to Ecology's Rules and Accountability Section with any questions related to these assumptions or with rulemaking costs in general.

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Complexity

In a review of recent rulemakings agency-wide, we identified four distinct levels of project complexity. A project's complexity is influenced by factors including policy topic, technical and staff workload demand, and the amount of anticipated stakeholder interest. These cost assumptions should always apply to Levels 1 through 3. Level 4 rulemaking estimates should be completed in consultation between program staff and the Rules and Accountability Section, but standard costs will likely still apply.

The tables below represent standard cost and situational assumptions for the four complexity levels.

Complexity Level 1

Time est.	6 months
Description	<ul style="list-style-type: none"> Incorporation by reference Procedural rules that only apply to government <small>*see RCW 34.05.238 for more information</small>
Topic	Varies
Standard Costs	0.50 FTE rulemaking lead for the duration; One public hearing with webinar access
Add'l Costs	No add'l staff costs; likely no AGO costs
Economics	None required; regulatory analyses or economic memos may be completed on case-by-case basis
Other Costs	None
On-going Costs	Communication staff, admin support, supervision <small>*on-going agency/program costs are not considered as additional for rulemaking</small>

Complexity Level 2

Time est.	18 months
Description	<ul style="list-style-type: none"> Majority of rulemakings fall here Modest scope Normal level of controversy and complexity
Topic	Fee updates, changes to existing requirements, etc.; Ecology's discretion about how to implement a statute
Standard Costs	0.50 FTE rulemaking lead for the duration; At least one in-person hearing with webinar access; at least one non-hearing public information meeting with webinar access
Add'l Costs	Technical staff participation, possible AGO costs (analyst to determine with AGO)
Economics	Regulatory analyses are required, likely at standard depth SBEIS determined project-by-project
Other Costs	Other potential costs include: <ul style="list-style-type: none"> - Temporary or project staff for duration of project - Programs that rarely complete rulemaking may contract rule staff with other Ecology programs - Facilitators for public meetings
On-going Costs	Stakeholder meetings, travel, communication staff, admin support, supervision <small>*on-going agency/program costs are not considered as additional for rulemaking</small>

Complexity Level 3

Time est.	2 – 2.5 years
Description	<ul style="list-style-type: none"> • Rulemakings that add a new chapter to WAC • Major rule revisions • High level of technical discussion and analysis and/or public interest
Topic	Typically new or major changes in rules related to: <ul style="list-style-type: none"> - Climate - Water Resources - MTCA - Solid waste standards
Standard Costs	0.85 FTE rulemaking lead for the duration; At least three in-person hearings with webinar access; three non-hearing public information meetings with webinar access
Add'l Costs	High technical staff participation, costs for additional COEE and CC5 participation above normal level, AGO staff costs (analyst to determine with AGO)
Economics	Regulatory analyses are required, likely at complex depth; SBEIS determined project-by-project; additional economic products may be required
Other Costs	Other potential costs include: <ul style="list-style-type: none"> - Consultants for project planning or technical analysis - Temporary or project staff for duration of project - Programs that rarely complete rulemaking may contract rule staff with other Ecology programs - Facilitators for public meetings - Stenographer for public meetings - Security for public meetings
On-going Costs	Stakeholder meetings, travel, communication staff, admin support, supervision *on-going agency/program costs are not considered as additional for rulemaking

Complexity Level 4

Time est.	>2.5 years
Description	This category is reserved for the most complex and involved rules, which could be related to a number of highly visible emerging and historic topics. When rules fall under this category, methodology for analysis is tailored to the specific rule, but would likely use the standard costs presented in this document. Programs should consult closely with the Rules and Accountability Section when estimating rulemaking costs for these rules.

Note: Emergency rules should be analyzed case-by-case in consultation with the Rules and Accountability Section as some impacts may fall outside of these assumptions. Likewise, a group of planned rulemakings on a single topic should be considered case-by-case, rather than automatically at a higher complexity level.

Staff

Ecology's programs have varying approaches to rulemaking. Programs assign a rulemaking lead to create and coordinate teams that make the most sense for the specific rulemaking. For example, a highly technical rulemaking about pollution limits may involve environmental engineers, chemists, and other scientific staff, while a politically complex rulemaking that creates a market-based emission reduction program may involve mostly senior-level environmental planners and specialists. Rulemaking lead position classes vary among programs.

We surveyed program rulemaking staff and reviewed previous rulemakings to create baseline assumptions for rulemaking teams in each program at Ecology. Staff and team involvement will vary among topics and project complexity. In some cases, programs that rarely engage in rulemaking may "borrow" team members from programs that engage rules more often.

Staff costs, including salary, employee benefits, goods and services, travel, capital overlays, and intra-agency reimbursements, are determined by Ecology's annual Standard Costs Summary.

Rulemaking Leads

Some programs keep a permanent team of rulemaking leads, while other programs indicated that they may hire temporary project positions for rulemakings. No Ecology staff works solely on rules; rulemaking leads all have additional responsibilities outside of rules. The table below represents our standard assumptions for Rulemaking lead position classifications among the different Ecology programs.

Rulemaking leads

<i>Program</i>	<i>Position</i>
Admin	MA5
Air Quality	EP3
Environmental Assessment	ES5
Hazardous Waste and Toxics Reduction	ES5
Nuclear Waste	ES5
Shorelines and Environ. Asst.	EP3
Solid Waste Management	EP5
Spill Prevention, Preparation, and Response	MTSSP3
Toxics Cleanup	RA3
Water Quality	EP3
Water Resources	EP5

Project Teams and Subject Matter Experts (SMEs)

Programs build rulemaking teams to suit the needs of each individual project. Despite the variation from project to project, we identified standard teams of policy and technical subject matter experts for each Ecology program. Staff participation is assumed to increase with a rulemaking's complexity. When surveyed, Ecology program staff identified between two and three common subject matter experts that work on rule projects. Below are project team assumptions for complexity Levels 1 through 3. Team assumptions for Level 4 rules should be made in consultation with program rule staff and the Rules and Accountability Section.

Policy and Technical SMEs

<i>Program</i>	<i>Position</i>
Admin	MA5, MA3
Air Quality	EE6, EP5, ES5
Environmental Assessment	NRS3, HG3, EE6
Hazardous Waste and Toxics Reduction	Chem4, NRS3, ES4
Nuclear Waste	ES5, NWPS
Shorelines and Environ. Asst.	EP5, EP4, ES5
Solid Waste Management	ES5, ES4, EE5
Spill Prevention, Preparation, and Response	MTSSP3, EE5,
Toxics Cleanup	EP5, ES5, EE6
Water Quality	NRS3, ES5, EP5
Water Resources	HG3, NRS3

Project teams: Level 1

Program	Lead	FTE	SME1	FTE	SME2	FTE	SME3	FTE
Admin	MA5	0.5	MA5	0	MA3	0		0
AQP	EP3	0.5	EE6	0	EP5	0	ES5	0
EAP	ES5	0.5	NRS3	0	HG3	0	EE6	0
HWTR	ES5	0.5	Chem4	0	NRS3	0	ES4	0
NWP	ES5	0.5	ES5	0	NWPS	0		0
SEA	EP3	0.5	EP5	0	EP4	0	ES5	0
SWM	EP5	0.5	ES5	0	ES4	0	EE5	0
Spills	MTSSP3	0.5	MTSSP3	0	EE5	0		0
TCP	RA3	0.5	EP5	0	ES5	0	EE6	0
WQ	EP3	0.5	NRS3	0	ES5	0	EP5	0
WR	EP5	0.5	HG3	0	NRS3	0		0

Project teams: Level 2

Program	Lead	FTE	SME1	FTE	SME2	FTE	SME3	FTE
Admin	MA5	0.5	MA5	0.25	MA3	0		0
AQP	EP3	0.5	EE6	0.25	EP5	0	ES5	0
EAP	ES5	0.5	NRS3	0.25	HG3	0	EE6	0
HWTR	ES5	0.5	Chem4	0.25	NRS3	0	ES4	0
NWP	ES5	0.5	ES5	0.25	NWPS	0		0
SEA	EP3	0.5	EP5	0.25	EP4	0	ES5	0
SWM	EP5	0.5	ES5	0.25	ES4	0	EE5	0
Spills	MTSSP3	0.5	MTSSP3	0.25	EE5	0		0
TCP	RA3	0.5	EP5	0.25	ES5	0	EE6	0
WQ	EP3	0.5	NRS3	0.25	ES5	0	EP5	0
WR	EP5	0.5	HG3	0.25	NRS3	0		0

Project teams: Level 3

Program	Lead	FTE	SME1	FTE	SME2	FTE	SME3	FTE
Admin	MA5	0.85	MA5	0.75	MA3	0.5		0
AQP	EP3	0.85	EE6	0.75	EP5	0.5	ES5	0.25
EAP	ES5	0.85	NRS3	0.75	HG3	0.5	EE6	0.25
HWTR	ES5	0.85	Chem4	0.75	NRS3	0.5	ES4	0.25
NWP	ES5	0.85	ES5	0.75	NWPS	0.5		0
SEA	EP3	0.85	EP5	0.75	EP4	0.5	ES5	0.25
SWM	EP5	0.85	ES5	0.75	ES4	0.5	EE5	0.25
Spills	MTSSP3	0.85	MTSSP3	0.75	EE5	0.5		0
TCP	RA3	0.85	EP5	0.75	ES5	0.5	EE6	0.25
WQ	EP3	0.85	NRS3	0.75	ES5	0.5	EP5	0.25
WR	EP5	0.85	HG3	0.75	NRS3	0.5		0

Regulatory Analyses

Ecology's regulatory analyses identify likely economic impacts from proposed and amended rules. The standard team for these projects consists of one lead economist (Economic Analyst 3) and one regulatory analyst (Regulatory Analyst 2), both employed at an agency-wide level. Standard economic projects span twelve weeks (8 weeks for preliminary analyses; 4 weeks for final analyses), regardless of rule complexity, however, more complex rules demand a higher proportion of time and attention from Ecology's economics team. Although several factors influence whether or not a regulatory analysis is completed for a rule, standard economic staff costs are included at complexity Levels 2 and greater. Unlike other standard costs, economic staff time is likely to be the same for Levels 3 and 4 rulemakings.

Economic staff

Position	Level 2 FTE	Levels 3 & 4 FTE
Economic Analyst 3	0.20	0.25
Regulatory Analyst 2	0.05	0.10

Other staff

The success of rulemaking projects often hinges on staff other than those mentioned so far including communications, outreach, administrative, facility, and management staff. Costs for time spent on rulemaking projects for these team members were not included because our assumption is their support of rulemaking projects falls within the positions' normal scope of work and therefore does not affect a change in agency expenditures.

Public Hearings and Meetings

Ecology holds at least one in-person public hearing for all rulemakings with very few exceptions. Most in-person hearings have an adjoining webinar to allow for increased accessibility and participation. Cost variance associated with hearings is related in large part to a rule's complexity, which is influenced by a number of factors including public interest and potential economic impact to businesses.

Public hearings for the least complex rules are held at Ecology facilities and would require little to no additional costs, while more complex rules with high public involvement across many areas of the state could incur significant costs. For example, Ecology may choose to host multiple in-person public hearings in various areas of the state for highly complex rules. These hearings often require additional expenditures including fees for renting private meeting spaces, facilitation, and other support.

Ecology may also hold non-hearing public information meetings for more complex rulemakings. These are often held via webinar, but may also be in person for the most complex rules. As with public hearings, Ecology may hold public meetings at agency venues, off site, or across the state, depending on public interests.

The following cost assumptions each assume that a single public hearing or meeting would last for four hours. Events for highly complex rules may take additional time and are typically held at moderately-priced venues outside Ecology facilities. Events for the least complex rules would likely take significantly less time than this and be held at agency venues with minimal inputs.

Standard Costs for Public Hearings and Meetings

Action	Location	Cost	Notes
Meeting space rental	Off-site	\$1,000	Assumption is based on a review of rates for four hours at Puget Sound Region hotel and public meeting rooms (outside of high cost areas)
Facilitation contract	N/A	\$1,500	Assumption is based on contractor costs for one non-Ecology staff facilitator

Public Hearings and Meetings Assumptions

	Level 1	Level 2	Level 2	Level 3	Level 3
On/Off-site	On	On	Off	On	Off
Meeting space rental			X		
Facilitation contract				X	X
Number of hearings per rule	1	1	1	3	3

Assumptions on public hearings and meetings for Level 4 complexity rulemakings are not provided as these rules will vary widely in the number of hearings and meetings held, the attendance and complexity of the events, and the geographic location of the events. In the most complex rulemakings, teams often travel around the state and hold multiple hearings and meetings; these costs should be estimated on a case-by-case basis.

Conclusion

The estimates and assumptions in this document are current as of November 2019 and may be updated without notice. This information is intended as an approximation to encourage consistency and accuracy among Ecology analyses. This document is not intended for external publication, but we encourage Ecology staff to share these assumptions when needed.

Please reach out to Ecology's Rules and Accountability Section with any questions.