



STATE OF WASHINGTON  
OFFICE OF FINANCIAL MANAGEMENT

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August 31, 2012

The Honorable Brian Sonntag  
Washington State Auditor  
P.O. Box 40021  
Olympia, WA 98504-0021

Dear Auditor Sonntag:

Thank you for the opportunity to respond to the State Auditor's Office performance audit report on "Regulatory Reform: Communicating Regulatory Information and Streamlining Business Rules" received on August 24, 2012. The Office of Financial Management worked with the 15 Cabinet agencies to provide a consolidated response. Non-Cabinet agencies will respond separately.

As you are aware, Governor Gregoire has made regulatory reform a top priority throughout her administration. She has issued a series of executive orders and requested numerous pieces of legislation aimed at improving how state agencies work together to reduce barriers for business, while protecting public health and safety and not compromising environmental quality that Washington citizens expect.

Actions to reform Washington's regulatory environment have been under way for some time. We wish your report would have recognized more of the significant improvements that have been made or are in process. We have included details on these efforts in the attached response. We are proud of the achievements the agencies have made and remain committed to making it easier to do business in the state of Washington.

We recognize there is room to improve and remain committed to continuing on the regulatory improvement path. That path is defined specifically in Governor Gregoire's Executive Orders (06-02, 10-05, 10-06, 11-03, and 12-01) to help ensure that Washington creates the optimal conditions for businesses to thrive. Thank you for ideas to further these efforts; some of them can be implemented within existing resources.

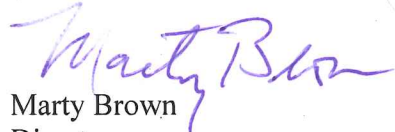
We appreciate the inclusion of Appendix J, which clearly demonstrates that Washington state's regulatory reform efforts meet and, in many cases, surpass other states' efforts. We also appreciate that the report acknowledges there are legitimate barriers to achieving some of the recommendations outlined in the audit. For example, you recognize that recommending the pursuit of a single, one-stop portal for all business transactions with state government "may be a longer term goal of the state because of current resource constraints." We also look forward to the planned future performance audit that will examine the cost effectiveness of a one-stop portal.



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As a point for consideration, we believe a comprehensive survey of businesses would have informed the scope of this audit, as well as the scope of any subsequent audits, to determine if the issues that matter most to businesses are the ones being reviewed.

Sincerely,



Marty Brown  
Director

Enclosure

cc: Marty Loesch, Chief of Staff, Office of the Governor  
Fred Olson, Deputy Chief of Staff, Office of the Governor  
Honorable Sam Reed, Secretary of State  
Honorable Mike Kreidler, State Insurance Commissioner  
Honorable Peter Goldmark, Commissioner of Public Lands, Department of Natural Resources  
Dan Newhouse, Director, Department of Agriculture  
Bette Hyde, Director, Department of Early Learning  
Ted Sturdevant, Director, Department of Ecology  
Paul Trause, Commissioner, Employment Security Department  
Scott Jarvis, Director, Department of Financial Institutions  
Phil Anderson, Director, Department of Fish and Wildlife  
Mary Selecky, Secretary, Department of Health  
Don Bennett, Executive Director, Washington Student Achievement Council  
Judy Schurke, Director, Department of Labor and Industries  
Alan Haight, Director, Department of Licensing  
Don Hoch, Director, Parks and Recreation Commission  
Brad Flaherty, Director, Department of Revenue  
Robin Arnold-Williams, Secretary, Department of Social and Health Services  
John Batiste, Chief, Washington State Patrol  
Paula Hammond, Secretary, Department of Transportation  
Jeffrey Goltz, Chairman, Utilities and Transportation Commission  
Stan Marshburn, Deputy Director, Office of Financial Management  
Kari Burrell, Director, Executive Policy Office, Office of the Governor  
Wendy Korthuis-Smith, Director, Accountability and Performance, Office of the Governor  
Bharat Shyam, State Chief Information Officer, Office of Financial Management  
Karen Pernerl, Acting Director, Office of Regulatory Assistance  
Richard C. Sweeney, Executive Director, Board of Accountancy  
Allyson Brooks, Director, Department of Archeology & Historic Preservation  
Rick Day, Director, Gambling Commission  
Robert Lopez, Executive Secretary, Horse Racing Commission  
Pat Kohler, Administrative Director, Liquor Control Board  
Bill Hanson, Chair, Lottery Commission  
Eleni Papadakis, Executive Director, Workforce Training and Education Coordinating Board

# OFFICIAL STATE CABINET AGENCY RESPONSE TO THE PERFORMANCE AUDIT ON REGULATORY REFORM: COMMUNICATING REGULATORY INFORMATION AND STREAMLINING BUSINESS RULES

AUGUST 31, 2012

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This coordinated management response to the audit report received on August 24, 2012, is provided by the Office of Financial Management on behalf of the following Governor's Cabinet agencies: Department of Agriculture, Department of Early Learning, Department of Ecology, Employment Security Department, Department of Financial Institutions, Department of Fish and Wildlife, Department of Health, Higher Education Coordinating Board (now the Washington Student Achievement Council), Department of Labor and Industries, Department of Licensing, Parks and Recreation Commission, Department of Revenue, Department of Social and Health Services, Washington State Patrol, Department of Transportation and the Utilities and Transportation Commission.

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**ISSUE 1:** Washington has not yet achieved the vision of a one-stop business portal.

**RECOMMENDATION 1:** The Legislature and Governor should continue to pursue a single, one-stop portal for all business transactions with state government.

## RESPONSE

We agree that easy access to complete regulatory information is critical to minimizing the time burden and cost of regulation to businesses, government and taxpayers. While we agree a one-stop regulatory site for business is in the state's best interest, as the report notes, "a single comprehensive business transaction portal may be a longer term goal of the state because of current resource constraints."

As the report acknowledges, efforts have been made to create a one-stop portal for all business transactions, including permits, licenses, tax payments, workers' compensation and unemployment insurance. As referenced in the report, the 2012 Legislature considered Senate Bill 6356 that, if approved, would have directed executive branch agencies to create a single portal for business transactions by January 1, 2013. The fiscal note for SB 6356 identifies an indeterminate fiscal impact; however, multiple agencies identified the fiscal impact as "large." Such a project would take years to complete.

In January 2012, Governor Gregoire issued Executive Order 12-01, which, in part, directed the state's Office of the Chief Information Officer, the Department of Commerce, the Department of Revenue, the Office of Regulatory Assistance and other executive agencies that license businesses or collect taxes and insurance premiums to: (1) review business community needs; and (2) evaluate technical options for creating an integrated enterprise system using a single sign-on or portal for business interactions with state agencies.

Appendix J of the report states that, as of January 2011, two states (Colorado and South Carolina) have developed a one-stop portal. As part of its research, the multi-agency work group established under Executive Order 12-01 reviewed other states' efforts to create a one-stop portal. To date, however, it appears neither the Colorado or South Carolina portals are truly one-stop. Approximately 12 other states are pursuing a one-stop portal, and while other states may be ahead

of Washington, no state portals appear to be actually one-stop. This illustrates the difficulty and complexity of creating such a portal.

### **Action Steps and Time Frame**

- Pursuant to Executive Order 12-01, ORA in collaboration with other regulatory agencies, will continue to enhance the [Business.wa.gov](http://Business.wa.gov) portal as resources allow. Ongoing.
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**ISSUE 2:** Regulatory information on agencies' websites is incomplete, and the sites are not all easy to use.

**RECOMMENDATION 2:** The Governor should use existing legal authority to direct expansion of the Business Licensing Service (BLS) website to include information and applications to all state agency business licenses. The regulatory agencies should work with the Department of Revenue to develop a timetable to include all of their licenses as system capacity allows.

### **RESPONSE**

We agree that the BLS should ultimately be expanded to include information and applications for all state business licenses. In fact, significant planned enhancements to BLS are under way. However, as the report acknowledges, even if all regulatory agencies were required or wanted to fully participate, the system lacks the capability to include all state business licenses. The current BLS system is supported by an aging mainframe that the Department of Revenue is working to replace. The agency hired a vendor to begin a BLS replacement study in July 2012, with a new system targeted for completion in two to three years. We do not believe there should be a requirement to participate in BLS until the system can accommodate the growth.

### **Action Steps and Time Frame**

- Not applicable.

**RECOMMENDATION 3:** The Legislature should revise the law (RCW 19.02.050) to remove the two agencies required to participate but that do not issue business licenses (the Department of Commerce and the Parks and Recreation Commission), and to add the agencies that do issue business licenses but do not now participate. The Legislature should also clarify that "full participation" by agencies requires them to provide information and applications for all their business licenses available on the BLS website.

### **RESPONSE**

We do not agree the Legislature should revise RCW 19.92.050 to include additional agencies' permits to the BLS until the system can adequately accommodate them. We would, however, support the Legislature amending RCW 19.92.050 to clarify that "full participation" by agencies requires them to provide information and applications for all their business licenses available on the BLS website.

### **Action Steps and Time Frame**

- Not applicable.

**RECOMMENDATION 4:** The Office of Regulatory Assistance should ensure that its website meets the statutory requirement (RCW 43.42.040) that it provides regulatory information for all business permits.

## **RESPONSE**

As the report states, the Office of Regulatory Assistance does not have sufficient resources to expand its website to provide information on all permits. That's why it chose to focus on environmental regulations and business start-up issues, and designed the website accordingly. The [www.ora.wa.gov](http://www.ora.wa.gov) website contains both the Environmental Permit Handbook (under the environmental permitting tab) and the Washington State Small Business Guide (under the small business tab). The Small Business Guide gives business owners complete guidance for licenses and permits issued by the 22 regulatory agencies that participated in building the Guide. These regulatory agencies meet quarterly to review and update the Guide under the Office of Regulatory Assistance's direction. This guide is in response to Section 7 of the Governor's Executive Order 10-05, Improving the Way State Government Serves Small Business.

### **Action Steps and Time Frame**

- The Office of Regulatory Assistance will continue its work to support small businesses and improve the availability of accurate and consistent regulatory information available to its customers. Ongoing.

**RECOMMENDATION 5:** The Office of Regulatory Assistance should expand the content of the "permits, licenses and inspections" page of the Doing Business section of Access Washington to provide links to the central business sections of the 26 regulatory agencies' websites.

## **RESPONSE**

As part of carrying out Executive Order 12-01, the [Business.wa.gov](http://Business.wa.gov) website will be enhanced.

### **Action Steps and Time Frame**

- The Office of Regulatory Assistance will consider appropriate measures to ensure regulatory agencies will be properly linked as these changes are made to the Business.wa.gov website. By December 2013.

**RECOMMENDATION 6:** The Office of the Chief Information Officer should develop standards that enable agencies to produce clear, consistent and usable web content. Standards should include requirements for:

- A prominent, consistently labeled link to business regulations and information on the agency home page.
- Clear pathways within three clicks from the home page to specific license and permit applications.
- Periodic usability testing by business customers to verify websites are complete and easy to use.
- Measuring the results of website revisions to ensure they are producing the intended results.

## RESPONSE

In response to Executive Order 12-01, the Office of the Chief Information Officer is currently leading a multi-agency effort with the departments of Revenue, Licensing, Employment Security, Labor and Industries, and Commerce, as well as the Office of Regulatory Assistance and the Secretary of State, to improve small businesses' ability to conduct business electronically with state government.

### Action Steps and Time Frame

- The Office of the Chief Information Officer and the multi-agency team will develop a plan with recommendations. By September 2012.

**RECOMMENDATION 7:** All regulatory agencies should provide complete and accurate regulatory information for businesses on their websites for all licenses and permits, including:

- The purpose of the license or permit.
- The types of businesses or business activities that require them.
- How to apply.
- All applications and fees.
- An estimate of the time required to process the application. Estimates could take several forms, such as the maximum processing time required (or allowed by law), a range of time based on recent experience or the average time required to process 95 percent of the applications during a recent period.

## RESPONSE

Executive Order 12-01 established a Small Business Liaison Program. The Office of Regulatory Assistance leads the small business liaison team to ensure responsive and effective coordination across state agencies, and to facilitate roundtable and outreach sessions with small businesses.

### Action Steps and Time Frame

- The Small Business Liaison team is working with agency chief information officers and webmasters to develop more consistent and user-centered approaches across all state agencies that regulate or work with small businesses to find and display online information frequently needed by businesses. By September 30, 2012.

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**ISSUE 3:** Agencies are streamlining some rules, but could improve their rule streamlining processes.

**RECOMMENDATION 1:** All state regulatory agencies should adopt streamlining processes that include:

- Documentation of the review requirement and the process.
- Review in regular intervals, to ensure all agency business rules are evaluated to determine if they are in need of streamlining.
- Specific criteria to evaluate the need, consistency and clarity of existing rules.
- Measurement and tracking of all results, before and after rules are streamlined.



## **RESPONSE**

We support ongoing efforts to streamline business regulations and rules. However, we do not believe that a “one size fits all” approach to rule streamlining is in anyone’s best interest. For instance, large regulatory agencies manage large numbers of rules. Given that agencies have limited resources, and in order to ensure public health and safety, agencies must prioritize their rulemaking activities. We believe priorities should be based on requirements set by federal regulations, changes to state laws and stakeholder requests. It is during these prioritized rulemaking activities that agencies continually evaluate the need, consistency, and clarity of rules and work to ensure that there is no duplication or overlap with other state or federal laws or rules.

We believe recommending that all regulatory rules be evaluated at least every four years could be counterproductive and might hinder efforts to serve the business community in the most efficient manner. Rather than a cyclical approach that is time driven, we believe each agency should be able to determine the review process that best meets stakeholder needs and what can be achieved with available resources. Moreover, reviewing regulatory rules at regular intervals would be in direct conflict with Governor Gregoire’s Executive Orders 10-06 and 11-03.

Governor Gregoire recognizes that in these unprecedented economic times, small businesses and governments find it more difficult to monitor and respond to proposed changes in rules and policies. She also recognizes that a stable, predictable regulatory and policy environment conserves resources for small businesses. To these ends, Governor Gregoire issued Executive Order 10-06 in November 2010, suspending non-critical rule development and adoption through the end of calendar year 2011. The order applied to all Cabinet agencies, boards, commissions and other agencies that report to the Governor. In addition, the Governor invited all elected officials, institutions of higher education, agencies, boards, commissions and other entities with rulemaking authority to also suspend non-critical rule development and adoption. On October 11, 2011, Governor Gregoire issued Executive Order 11-03, which extends implementation of Executive Order 10-06 for another year, through December 31, 2012.

Per the Governor’s request, the Executive Policy Office published guidelines for implementation of the executive orders. The guidelines asked that all agencies report by January 2012 and again by January 2013 on the number of rules eliminated or suspended in response to the executive order, and the number of and justification for rules that proceeded through development and/or adoption while the order was in effect.

In June 2012, the Office of Financial Management and the Office of Regulatory Assistance issued the report “2011 Implementation of Executive Order 10-06: Suspending Non-Critical Rule Development and Adoption.” A total of 68 agencies (39 subject to the executive order and 29 not) provided information for this report.

### **Analysis of the agencies’ responses showed:**

- A significant reduction in rulemaking activity from the prior year.
- A number of agencies refrained from rulemaking altogether.
- 75 rules were eliminated.
- 483 rules were put on hold.
- 186 rules adopted were required by law.
- 118 rules adopted were requested by the regulated communities.

- 69 rules adopted were related to managing budget reductions and related government reforms.
- 28 were adopted to address public health or safety concerns.
- Five rules were necessary due to court orders.
- 30 rules were adopted after negotiated or pilot rulemaking.

The report on EO 10-06 concluded that it appeared the executive order accomplished its intended purpose of conserving limited public resources and reducing impacts on small businesses during the recession.

The following examples highlight what some of the audited Cabinet agencies are doing to streamline rules processes:

Agriculture – Documents and tracks all rules review. Conducts rules review at regular intervals. Uses criteria for review based on Executive Order 97-02. Measures results through ongoing stakeholder input. Uses ongoing communication with stakeholders to ensure rules and regulations are consistent, clear, and predictable. Majority of rule changes are initiated by stakeholder requests.

Early Learning – Reviews each of its rules every two years as required by RCW 43.215. Agency staff created a matrix that identifies criteria for streamlining, which is provided to stakeholders.

Ecology – Regularly reviews rules for consistency and clarity. Some rules require more frequent updates than others, so a regular interval for all rules is not practical. Ecology believes its rulemaking process achieves the same outcome that the SAO recommends for streamlining through the agency's biennial programming process, internal policies and established rulemaking process.

Social and Health Services – Reviews its rules every four years, as prescribed by agency policy that rules should be streamlined according to the criteria identified in Executive Order 97-02.

Labor and Industries – Regularly reviews rules to determine relevance, consistency and clarity. The process is guided by changes to state or federal laws, budget activities and fiscal changes, input from stakeholders, actuarial recommendations, annual workers' compensation rate-making and classification review. Performs regular and consistent communication with stakeholders. Seven out of 15 programs with rulemaking authority have advisory committees that include business and labor representatives.

State Patrol – Requires staff to review rules every two years. The criteria and process for rule review are specified in the agency's Regulation Manual.

### **Action Steps and Time Frame**

- Agencies will continue to look for opportunities to improve their rule streamlining process. Ongoing.



**RECOMMENDATION 2:** The Governor should require agencies to measure and demonstrate the results of their streamlining by:

- Holding agencies accountable for demonstrating clear, measureable results from streamlining in accordance with Executive Order 06-02.
- Monitoring results through the Government Management, Accountability and Performance (GMAP) process, a reinstated improvement subcabinet or some other regular reporting structure with executive level leadership.

## **RESPONSE**

Executive Order 06-02 requires agencies that collect taxes or provide permits, licenses, approvals and other regulatory services to measure their performance and report publicly every quarter through the GMAP program. Executive Order 06-02 does not specifically direct agencies to measure their rules streamlining efforts.

In addition, the audit report asserts that none of the agencies formally measures and tracks the results before and after rules are streamlined. We are concerned that there is no consideration of the level of difficulty and staffing resources that an additional reporting requirement will require.

Moreover, the number of pages, or number of rules eliminated, as suggested in the logic model in Appendix C of the report, is not necessarily a good indicator that a rule has been streamlined. In fact, several agencies have found that when streamlining rule language, the rule may become longer due to adding more words, charts or lists to clarify meaning.

As your report notes, the GMAP “economic vitality dashboard” includes data on permit decision making times from Ecology and Fish and Wildlife, and on application processing times from Revenue, the Liquor Control Board, and the Office of Minority and Women’s Business Enterprises. There was an effort to review licenses and permits for inclusion into GMAP and to determine which have the most return on investment for the work to track them. In all, the review covered about 115 business licenses and permits across six agencies, and most were too infrequent to warrant quarterly tracking or did not delay businesses during processing.

### **Action Steps and Time Frame**

- Agencies will continue to ensure that regulations meet standards of need, reasonableness, effectiveness, clarity, fairness, stakeholder involvement, coordination, and consistency with legislative intent. In addition, agencies will look for additional meaningful measures to track regulatory improvement for inclusion in the GMAP process as appropriate. Ongoing.

