

**The Rules**  
**WAC 197-11**

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## PREFACE TO THE PROPOSED RULES

### The Role of Rules in SEPA

The quality of the administrative rules for carrying out SEPA is central to the act's success. Legal commenters have observed that the statute is written in broad terms, more in the style of a constitution than a typical statute. A practical set of procedures is needed to make the law work as intended.

The act therefore requires the department of ecology (DOE) to issue uniform statewide rules. The act specifies, in one of its longest sections, what the rules must contain.

The SEPA process, like that of its federal cousin NEPA, has been defined by administrative rules more than many people realize. Legislation and court cases may grab headlines, but the administrative rules have given shape to the SEPA process from the early 1970s through the present. Recognizing this fact, the legislature directed the Commission to review SEPA's administrative rules and practices.

In addition to a renewed commitment by all interests to work together to make SEPA work as intended, better rules may be the single most effective way to improve the SEPA process. Rules establish concrete mechanisms to carry out the act's environmental protection mandate and to meet the three aims of reducing unnecessary paperwork, duplication, and delay; simplifying the procedures and making the process more predictable; and improving the quality of environmental decisionmaking, including public involvement.

### The Materials in this Report

The proposed rules are in Appendix B. This Preface explains some of the background for the proposal and indicates some of the alternatives considered by the Commission.

The Summary of Proposed Rules, which follows, highlights the main features of the proposal and the process which generated the recommendations. It is similar to a traditional rulemaking preamble, which explains the rule's purposes and provisions.

The Section by Section Analysis of the Proposed SEPA Rules, which concludes this section, helps the reader to understand the format of the rules and highlights aspects of the rules and drafting considerations. The Section by Section Analysis is an administrative history, similar to the Section by Section Summary of the legislation. It is intended to help people understand the basic concepts and intent of the rules.

## Problems with the Existing Process

The Commission's study found that SEPA has been a positive influence on state and local decisionmaking, but several important problems have developed under the statute.

First, while the state has issued and periodically revised a set of guidelines for implementing the environmental impact statement (EIS) process, the status of these guidelines is not unequivocal. Some court decisions have not referred to them in interpreting the statute. In addition, the term "guidelines" connotes an advisory, rather than a mandatory, function. Another problem has been that the scope of the existing state guidelines is largely confined to the EIS process. There is a lack of direction on other important procedural and substantive requirements of SEPA.

As a result of these factors, inconsistent agency practices have evolved under the statute. This in turn has impeded interagency coordination in preparing environmental analyses and making decisions affecting the environment. It has also caused uncertainty and confusion among those outside of government seeking a role in the EIS process and has diminished their ability to contribute relevant information and make informed comments on an agency's analysis. It has caused the private applicant the bewilderment of being confronted with a host of different means of implementing the same law.

Third, many environmental impact statements contain technical evaluations which are difficult for the layperson to decipher. Such documents are more likely to be put on the shelf as reference material than closely read by the final decisionmakers. Highly technical analyses are also difficult for applicants and the general public to comprehend and comment upon.

Fourth, the preparation of environmental impact statements has tended to become an end in itself rather than a means to better decisionmaking. RCW 43.21C.030(2)(c)'s requirement of a "detailed statement" is the most clearly defined, firmly established standard under SEPA, and the existing guidelines focus on the preparation of this document. It was only natural that members of the public seeking a role in the process, and courts faced with the task of interpreting this law, should focus on the EIS. In the meantime, however, SEPA's relationship to agency planning and decisionmaking has not received sufficient attention.

Fifth, in anticipation of litigation, some agencies adopt the "kitchen sink" approach to discussing virtually all environmental issues raised by a proposal rather than concentrating on the significant ones. The resulting "litigation proof" documents often include large accumulations of materials that are difficult to assimilate both by members of the public attempting to evaluate a project and by officials required to consider environmental factors in their planning and decisionmaking. The document, in attempting to become legally defensible, has simultaneously become less useful to its readers.

Finally, when taken together, these deficiencies have contributed to a broader and more general problem under the statute. Agencies have generated excess paperwork, produced unnecessary delays, and duplicated their efforts under the statute (specific problems and issues for certain key parts of the process

are explained in this report's executive summary). As a result, scarce resources have been unproductively spent, and private applicants needlessly inconvenienced. Equally important, effective public participation and public confidence in the process has been weakened as a result.

### Improvements in the SEPA Process

In 1981, the legislature directed the Commission to make recommendations to:

... establish methods and means of providing for full implementation of the Act in a manner which reduces paperwork and delay, promotes better decision-making, establishes effective and uniform procedures, encourages public involvement, resolves problems which nearly ten year's experience with the Act has revealed, and promotes certainty with respect to the requirements of the Act. (Section 1, Chapter 289, Laws of 1981, RCW 43.21C.200.)

The legislature enacted the Commission's statutory recommendations for improvements to the act in SSB 3006, including the provision governing the content of the state SEPA rules, directing DOE to:

... adopt and thereafter amend rules of interpretation and implementation of this chapter (the state environmental policy act of 1971), subject to the requirements of chapter 34.04 RCW, for the purpose of providing uniform rules and guidelines to all branches of government including state agencies, political subdivisions, public and municipal corporations, and counties. (Section 7(1), Chapter 117, Laws of 1983, RCW 43.21C.110(1), amended text underscored.)

The legislature also added a new section to the act directing that:

The rules promulgated under RCW 43.21C.110 shall be accorded substantial deference in the interpretation of this chapter. (Section 6, Chapter 117, Laws of 1983, RCW 43.21C.100.)

By directing that uniform rules be issued and given deference, the legislature sought to clarify the status of the department's guidance on SEPA and to provide for a single set of uniform regulations to be followed by all agencies. When all agencies follow the same rules, it should make it easier for them to work alongside one another in preparing and considering environmental analyses under SEPA. Uniform rules will also provide the public with a clearer understanding of how state and local government functions under SEPA, and make it easier for applicants and other citizens to acquire the information they need to participate in the SEPA process. The confusion that exists in the private sector, both among business and individual citizens, which was created by different agencies applying the same law differently with different terminology and different procedures, will be greatly reduced. Some variations will still be necessary and desirable because of different agency missions and programs and local conditions, but they will occur within a more uniform set of rules.

Similarly, by extending coverage of the rules to SEPA's substantive and procedural requirements, instead of limiting them to the environmental impact statement, the legislature sought to achieve a better balance in the interpretation of SEPA. The rules should place renewed emphasis on what happens both before and after an EIS is prepared and focus attention on the extent to which environmental analyses actually contribute to environmental quality. The EIS will assume its appropriate role, not as an end in itself, but as a step in the SEPA process that begins with planning, goes through assessment, and, if necessary, a detailed statement, to a decision, and ends with follow-up on that decision and better procedures for appeals.

### Major Alternatives Considered by the Commission

The Commission considered a wide range of alternatives in its review. These alternatives may be grouped in three types: alternative concepts for the rules; alternative frameworks for the SEPA process; and alternative provisions for the rules.

#### 1. Alternative Concepts for the Rules

The Commission considered several concepts for improving SEPA practices and procedures. The "no action" alternative was considered and rejected because it was felt necessary to address the problems with the existing process. In addition, failure to do so would probably result in considerable legislative controversy and could result in legislation that would seriously weaken SEPA.

A variation on the "no action" alternative was to retain the existing guidelines, and either upgrade their status by requiring that they be given deference or by enacting them legislatively. It was felt that this also would not sufficiently address the existing problems with the current guidelines.

Similarly, the Commission carefully considered and rejected the alternative of making no changes in the statute, but only changing the administrative rules. The Commission felt that administrative exhortations to reduce paperwork had not been effective enough, and that clear statutory direction was needed. In addition, the appeals provisions required statutory authority, and the Commission's comprehensive review revealed the need for some minor technical amendments, such as repealing or decodifying various sections.

It should be stressed that the existing guidelines have served the state and the SEPA process well. They were studied and used by other states and by the federal government when the new Council on Environmental Quality NEPA Regulations were developed in the late 1970s. The proposed rules incorporate a large amount of the existing guidelines, and many provisions verbatim. The guidelines are about seven years old now, however, and required updating in some form to keep pace with improvements in environmental assessment techniques and procedures and to increase certainty of the act's requirements.

Equally important, although the guidelines include many farsighted concepts, it was felt that a new impetus was necessary to get people to break bad habits and to administer the SEPA process as intended. One of the major challenges

of the Commission was to recommend improvements that would provide this impetus, while limiting changes in the procedures and avoiding disruption that could be caused by a new process. The Commission and its Drafting Committee spent a great deal of time trying to minimize the transition to a new set of rules. This will also preserve important precedents under the current law and reduce the need for major new court interpretation.

Another alternative concept was to use simple revision of the existing guidelines by adding or deleting some specific language. This "line out" approach to improving the rules was rejected because it was not possible to fit the recommended improvements into the current organization (focused, as it is, on EISs) without causing conceptual inconsistencies or excessive repetition. Furthermore, the Commission members placed heavy emphasis on producing a set of rules written in simpler English than many of the current guideline provisions. Although the proposed rules are organized similarly to the existing guidelines, there are some important differences (see the explanation of the format of the rules in the Section by Section Analysis). The Commission therefore decided to recommend the adoption of a chapter 197-11 WAC, rather than awkwardly fitting the changes into the existing chapter 197-10 WAC.

One area of consideration was the relationship between statewide and individual agency rules. One alternative was to adopt a single set of statewide rules, with no individual agency rules. Although this would provide greater uniformity, it would also be excessively rigid. Another alternative was to make the statewide rules shorter and more general, placing greater emphasis on individual agency procedures. Although this might result in better integration between SEPA and an individual agency's decisionmaking process, this more decentralized approach would increase the disparities among agency SEPA practices, making SEPA harder to understand for citizens and business alike.

Consideration was also given to legislating a new set of rules, but this alternative was rejected because it was felt that the act itself should not be forced to assume the detailed administrative role. In addition, future administrative improvements may be necessary or desirable without opening up the statute for amendment.

## 2. Alternative Frameworks for the SEPA Process

The basic functions of the SEPA process are generally stated in the first three sections of the act. The SEPA process itself has been defined by the rules, as noted earlier. Many variations are possible, and some of those considered are summarized below.

The Commission considered the concept of "functional equivalence": the requirements for analysis, documents, or public participation under another law would substitute for SEPA compliance. This concept currently has limited application in California and, arguably, for certain U.S. Environmental Protection Agency permits. In addition, the state Energy Facility Site Evaluation Council requested the Commission's endorsement to exempt their actions from SEPA, claiming a duplication of requirements. Other state and local laws were

examined as well to determine if these would provide comparable requirements to SEPA. The Commission concluded that they would not.

Rather than adopting the functional equivalent approach or allowing substantial new agency SEPA exemptions, the Commission focused on better ways to achieve SEPA's recognized mandate of integrating the environmental review process with agency planning and decisionmaking. Better integration was a major focus of the federal reforms in coordinating environmental reviews and permit processing and in reducing paperwork, duplication, and delay, as well as a focus of recent state efforts to improve permit processing.

Consideration was also given to prescribing a single EIS, rather than a draft and final document (coupled with requirements to document an agency's response to comments and its decision). There was also considerable sentiment for a "briefing style EIS", which would require the document to be quite short (more on the order of an EIS summary), reserving background analysis for supporting documents. Although such EISs would probably be read and used, it was felt that many writers were not skilled enough to produce a high quality short document and that vital information would be omitted.

Another framework was the "multi-staged" process, where each stage would be confined to discrete issues and provide the agency with the basis for deciding whether the proposal should be considered further or not. There would be an environmental review associated with a proposal's feasibility, a more detailed assessment at the conceptual stage of the decision process, a detailed statement focusing on actual design, and an implementation document covering mitigation and monitoring. Although this would allow the issues to be quite narrow for each stage of the process, it was felt that a multi-staged process was too complicated and would not be flexible enough for the great variety of proposals subject to SEPA.

The creation of a "mini-EIS" was discussed at length. The Commission concluded that the better approach was to require a procedure for identifying the significant impacts to be discussed in a given EIS -- however broad or narrow these might be -- than to create a new label which would be difficult to define and use. The rules therefore plainly allow an EIS to cover one or two impacts, if those are the only significant ones. Likewise, a proposal may have significant impacts for every element of the environment, and the EIS would analyze all of these. The Commission concluded that the descriptive checklist, mitigated DNS, and scoping requirements provided a more logical conceptual basis, greater certainty as to SEPA requirements, and a more practical and flexible approach than creating a formal creature called a "mini-EIS".

It should be emphasized, however, that the Commission applauded those agencies that developed the "mini-EIS" approach as a way of dealing with unnecessarily bulky EISs, and the rules would not preclude an agency from putting any label it wished on its EIS. The Commission concluded that such labels, whether "mini", "focused", "scoped", "programmatic", "generic", and so on, are simply superfluous or confusing. In contrast, the labels "project" and "nonproject" (an EIS on a "policy", "plan", or "program") may be helpful to the reader because they indicate the type of proposal which is the subject of the EIS.

### 3. Alternative Provisions for the Rules

Many of the alternative provisions for the rules are apparent in reading the intent and considerations discussed in the Section by Section Analysis. The introduction to the Summary of the Commission Meetings, later in this report, may give the reader some helpful insights into this subject as well. One example here may be useful to understand some of the Commission's deliberations.

The concept of scoping has been one of the innovations in the proposed rules most uniformly praised by members of the public ranging from business to environmentalists. There was considerable discussion of the concept and its implementation.

Some people objected to the formality of the scoping process, expressing the view that compliance with this provision in every case would be time consuming, would lead to legal challenges by citizens and private organizations with objections to the agency's way of conducting the process, and would lead to paperwork if every issue raised during the process would have to be addressed to some extent in the environmental impact statement.

Some people stated that agencies themselves were in the best position to determine matters of scope, and that public participation in these decisions was unnecessary because any scoping errors that were made by such agencies could be commented upon when the draft EIS was issued (as is currently done) and corrected in the final EIS. Some urged that scoping at least be more open-ended and flexible and that agencies merely be encouraged rather than required to do scoping.

Other people said that the idea had not gone far enough in imposing uniform requirements and that more stringent requirements were necessary to ensure that agencies did not avoid the responsibility. Some urged that a scoping meeting be held in every case, and that a scoping document be issued reflecting the decisions reached during the process. Some people felt that the benefits of scoping would not be attained without formal appeals of scoping determinations. Others felt that this would delay the process, comments could not be absolutely definitive at this point, and changes were inevitable as a result of studies during the EIS process (finding out the environmental impacts is one of the purposes of preparing an EIS).

The range of concerns and considerations by the technical committees and the Commission reflect many of the creative tensions present in any administrative, planning, and decisionmaking process. Far from indicating that an early scoping process is unworkable or inherently flawed, the Commission was able to design a scoping requirement that is sensitive to these concerns and could substantially improve the existing SEPA process. Scoping will allow shorter, focused EISs and earlier public participation. This will help to identify and resolve problems early in the process before applicants agencies spend a lot of time and money on a proposal and are less interested in considering alternatives. Because of its informality, the success of scoping in each case will depend on the participants' commitment to make it work. This was also viewed as its greatest strength, because ultimately it is the people involved in the SEPA process on any given proposal who can make the process work. The

rules cannot legislate dispute resolution any more than they can legislate good, clear writing. The rules can provide the direction and the tools.

### Responding to the Legislative Process and to Comments on the Initial Draft

Many of the concerns about the legislative intent of SSB 3006 have been incorporated into the proposed rules. For example, concern was raised about the meaning of the term "probable" impacts because there might be a situation where severe impacts would occur even though the probability of occurrence would not be high, such as a nuclear reactor meltdown. In addition to defining "probable", the rules plainly state that "the severity of an impact should be weighed along with its likelihood of occurrence" (197-11-060(5)(c) and 970(2)(f)). These rules include helpful language suggested by the League of Women Voters.

Concern was also expressed that scoping provide adequate notice. The idea of simply using the phrase "adequate notice" would engender uncertainty and future controversy over what constitutes adequate notice, which has been one of the problems with the existing SEPA process. The rules not only define scoping as giving notice to agencies and the public, they specify notice requirements, including the SEPA REGISTER, newspaper publication, and posting on site (197-11-510), and encourage additional methods (197-11-520). This is stronger and more certain than the current guidelines for giving notice on EISs.

Another concern was preserving the option for agencies to include information on any impacts, whether or not environmental, in EISs as a result of scoping comments or an agency's own analysis. The rules maintain this option, consistent with the legislative intent that neither agencies nor applicants are required to include such material (197-11-440 and 448).

Some concerns and suggestions were not incorporated into the rules because they were rejected in the legislative process. A few examples include: broadening environmental review to require coverage of non-environmental impacts; opening up categorical exemptions to a proposal-by-proposal consideration of whether impacts may be significant; and extending the existing six month deadline for agencies to prepare their SEPA policies and procedures as a result of the revised rules.

As part of the preparation of the final proposed rules, the Commission solicited and received valuable suggestions and constructive comments from many individuals and groups, in addition to comments received prior to and at the Commission's public hearings and during the legislative process. The Commission had previously stated that it intended to correct any problems identified in the draft rules before proposing them. After the Governor signed SSB 3006, Chairman Bluechel invited suggestions from a wide range of groups and individuals for any needed clarifications, before the Commission made its rule recommendations to DOE.

Public officials representing cities and counties held several workshops to furnish the Commission with detailed comments to ensure the rules would work as intended. Industry representatives, such as the Washington Forest Protec-

tion Association and urban developers, and members of environmental and citizen groups, such as the Washington Environmental Council and League of Women Voters, submitted suggestions for specific clarifications, as did other interested persons. Some groups and individuals stated that they would prefer to reserve their comments for the rulemaking process that would be conducted by DOE after receipt of the Commission's proposed rules. It is expected that many of those who commented to the Commission will also be submitting comments to DOE as part of its rulemaking process.

The Commission's careful consideration of the comments on its initial draft rules is reflected in the fact that some 96 sections of the initial draft rules have been improved, largely in response to comments from government officials and the general public. Before their inclusion, the suggestions were reviewed to ensure that they were consistent with SSB 3006, the recommendations of the technical committees, and the decisions of the Commission which were incorporated into the initial draft rules and into SSB 3006.

The willingness of so many concerned citizens with diverse perspectives to volunteer their time and to work together over the past two years is a remarkable and encouraging precedent.

## I. OVERVIEW

### Title and Number

Chapter 197-11 WAC, State Environmental Policy Act (SEPA).

### Statutory Authority for Proposed Rule

RCW 43.21C.110 and RCW 43.21C.200-204.

### Summary of Proposed Rule

This rule would improve the SEPA process by updating and simplifying the procedures for compliance with the act. The rule would replace the current SEPA guidelines (WAC 197-10) adopted nearly 7 years ago. These proposed rules were developed by the Commission on Environmental Policy and are being considered for adoption by the state Department of Ecology (DOE), as required by statute.

### Purpose of the Proposed Rule

The purpose of these rules is to provide all agencies of the state, including local governments, with an efficient, uniform procedure for translating the law into practical action.

They were developed after careful study of experience in this state, in other states, and in the federal government, to make the law work better for all concerned. For example, the proposed rules reduce paperwork and costs in a number of areas, and they also improve the public's ability to participate earlier in decisions.

It is important to understand that these rules both strengthen environmental protection and reduce red tape on private and government projects, and that new rules can achieve these goals at the same time. The proposed rules were designed to accomplish the intent of the legislature, which can be summarized as three principal aims:

1. Reducing unnecessary paperwork, duplication, and delay.
2. Simplifying the rules and making the process more predictable.
3. Improving the quality of environmental decision-making, including public involvement.

Meeting these objectives will better accomplish the act's objective, which is to protect and enhance the quality of the environment.

### Reasons Supporting the Proposed Action and Legislative Intent

The state legislature expressed concern that the SEPA process had become too confusing and cumbersome, weakening the ability to achieve the environmental protection goals of the statute, and making it difficult for business and industry, citizens and environmental organizations, and state and local officials to comply with the law and to participate effectively in public decisions affecting environmental quality.

The legislature therefore amended SEPA in ESSB 4190 (1981) and SSB 3006 (1983). These proposed rules were developed under those amendments (the process is described at the end of this summary).

In brief, the legislature created a bipartisan Commission on Environmental Policy in 1981 and directed it to review SEPA and propose improvements in the statute and rules, if needed.

In addition to proposing the SEPA amendatory legislation enacted into law this past session, the Commission developed and endorses the rules that follow. The Commission, composed of eight legislators and six citizens representing a broad range of interests, was assisted by an advisory committee of nearly 100 people from widely diverse backgrounds. The Commission believes that the proposed rules further the legislative intent and letter and spirit of SEPA and recommends their adoption by DOE.

## II. SUMMARY OF CHANGES

The Commission found that the current SEPA process was basically sound, and that the guidelines needed to be updated, simplified, and improved. The Commission is proposing to retain the basic process of using an environmental checklist and draft and final EISs to analyze environmental impacts.

Although the existing guidelines contain valuable guidance, some of the provisions have not been carried out for fear of challenge. The Commission focused its efforts on developing workable procedures so that the act's objectives are carried out fairly and effectively. Some of the highlights of the proposed rules are described below. Reforms in each of the three areas will help to reinforce one another.

### A. REDUCING PAPERWORK, DUPLICATION, AND DELAY

1. Scoping. The rules require the use of an early "scoping" process to identify significant environmental issues. Scoping means giving notice to agencies and the public that an environmental impact statement is being prepared and inviting comments on its scope. Scoping allows shorter, focused EISs and earlier public participation. This is intended to help identify and resolve problems early in the process before applicants and agencies spend a lot of time and money on a proposal.

2. Simpler EIS format. The rules spell out a simpler, standard format intended to eliminate repetitive discussion, highlight the significant impacts of the proposal and alternatives, and focus on the real issues. The number of main sections of an EIS would be reduced from 9 to 2; the number of major environmental headings would be consolidated from 20 to 9.

3. Reducing the length of EISs. The rules would put reasonable page limits on EISs, to make documents short enough that decisionmakers and the public read them (75 pages, or 150 pages for unusually complex proposals). The page limits do not apply to items which may be long and outside of the control of the agency, such as comments and responses and appendices. The rules take the approach that the environmental analysis must be rigorous, while the paperwork can and should be reduced, with the overall record providing the necessary documentation.

4. Requiring an EIS cover memo and fact sheet. The rules would require a cover memo of less than 2 pages to highlight the environmental issues for the reader. A standard form "fact sheet" would start the EIS and tell the reader when comments are due, where supporting documents are available, and other vital information.

5. Eliminating duplication by using existing studies. The rules direct and encourage agencies to use existing environmental studies wherever possible. Incorporation by reference is encouraged with appropriate rules so that agencies and the public can find the documents being referenced.

6. Eliminating repetitive discussions through phased review. In addition to better format, the rules provide for "phased" review, similar to "tiering" under NEPA, so that subsequent studies do not repeat material covered by earlier environmental reports. This also allows more thought to be given to the logical timing and scope of an environmental study and can produce more useful studies at less front-end cost.

7. Integrating SEPA requirements with other laws. The rules require agencies to coordinate their permit processes and SEPA compliance, especially when several agencies have authority over a project. The rules allow documents and notices to be combined, as long as SEPA requirements are met. Agencies must also comment specifically on concerns about environmental information, methodology, and mitigation measures.

8. Requiring earlier review. Where an agency's only action is a permit which requires the submission of detailed plans and specifications, the rules require the agency to provide for earlier environmental review, at the conceptual stage, so that environmental problems can be identified and resolved before major cost commitments are made.

9. Allowing flexible thresholds for minor new construction. The rules allow agencies to raise certain levels for categorical exemptions on minor new construction.

10. Requiring timely comment. The rules require agencies and the public to comment within the applicable time periods. The comment period for draft EISs has been shortened from 35 to 30 days; opportunity is provided to consider extensions.

## B. SIMPLIFYING THE RULES AND INCREASING CERTAINTY

1. Revised guidelines. The Commission decided that the best way to simplify the rules and increase certainty was to rewrite the guidelines in simpler English and reorganize the rules so that they are more readable and usable by applicants, citizens, and agency officials. A great deal of effort went into improving the format and style of the rules. A nonregulatory introduction is included as the first section of the rules, so that members of the public who may be unfamiliar with SEPA can get an overview of the process before reading the rules.

2. Simpler and more uniform criteria and definitions under SEPA. The rules establish uniform definitions for key terms and more definite criteria and procedures for complying with the act's requirements. The

rules establish uniform notice and other requirements to remove uncertainties about whether an applicant or agency would be subject to various challenges for the adequacy of its SEPA compliance.

3. Certainty on actions during the SEPA process. The rules provide better environmental protection and greater certainty on what actions can be taken while the SEPA process is underway.

4. Simplifying supplemental review. The rules establish one basic test for requiring supplemental review and reduce the types of supplemental documents from about 10 to 2: a supplemental EIS and an addendum.

5. Clarifying the relationship between environmental and other relevant factors in decisions. The rules stress that environmental values are often not reducible to monetary terms, and this must be considered if an agency uses a cost-benefit analysis in its decision. The rules also provide clearer guidance on the difference between EISs (for considering environmental factors) and the ultimate balancing by decisionmakers (which may include other relevant factors), but give agencies the option to discuss other impacts based on public comment or agency analysis.

6. Clarifying categorical exemptions. Along with statutory amendments, the rules reaffirm the ability of agencies and members of the public to rely on a system of categorical exemptions. The rules explain categorical exemptions more clearly and plainly provide for those circumstances when they would not apply. Since agencies and interest groups did not identify problems with many of the existing exemptions, the Commission did not undertake to review and revise the substance of categorical exemptions unless requested to do so by the legislature (school closures and EFSEC) or by members of the public. Few suggestions were received for changes, indicating that the existing exemptions had generally worked well since their adoption in 1976. The exemptions in the proposed rules are essentially the same as the current guidelines, with very few exceptions, such as the flexible thresholds for certain minor new construction.

7. Clarifying the appeals procedure. More uniform rules and a generally simpler and faster process for the conduct of SEPA appeals are provided, based on the recent statutory amendments. Multiple agency appeals have been reduced, saving costs for applicants, concerned citizens, agencies, and taxpayers. The rules provide that appeals should come at the end rather than the middle of the process and should generally cover both the SEPA challenge and agency permit decision. If an agency has an appeals procedure, it must be used before a lawsuit may be filed.

## C. IMPROVING ENVIRONMENTAL DECISIONMAKING, INCLUDING PUBLIC INVOLVEMENT

1. Usable documents. One of the main ways the substantive goals of the act can better be achieved is by getting environmental information to decisionmakers in a form they will use. Shorter documents, better format, and scoping all serve this purpose. Earlier agency and public participation through scoping can also produce better decisions and help resolve environmental conflicts early.

2. Environmental checklist. A new "environmental checklist" requires description of a proposal and site, rather than conclusory "yes-no-maybe" answers. The new checklist also identifies mitigation measures and avoids demanding overspecialized material from citizens. It is designed to provide better environmental information at a lower cost to applicants. Since most projects are reviewed using checklists (because they do not have "significant" impacts requiring an EIS), the new checklist can go far toward improving decisionmaking.

3. Mitigated DNS. The rules allow agencies to issue a determination of nonsignificance (DNS) if a proposal does not have a significant impact, as a result of mitigation measures that will be implemented. The rules allow applicants to request early notice whether an agency believes an EIS is likely to be required, and to clarify or change the proposal accordingly; public notice is given for such mitigated DNSs to avoid abuse. The new checklist will also provide a better basis for these determinations.

4. Substantive authority and mitigation. The rules affirm SEPA's substantive authority -- the conditioning or denying of projects based on environmental impacts -- and provide a set of basic rules for its use. The rules are designed to allow reasonable mitigation measures to be imposed, and to protect applicants' from potential abuses. The rules also require agencies to disclose their SEPA policies to the public.

5. Recording the decision. The rules require an agency to document its decision and any mitigation measures and to make the document publicly available. The rules also require agencies to identify the substantive SEPA policies they used in making their decisions.

6. Emphasizing options. The rules stress the comparison of the environmental impacts of the reasonable alternatives, from describing a proposal in terms of options (especially for public and nonproject proposals) to putting the comparison of the environmental impacts of alternatives up front in an EIS.

7. Improving document content. In addition to reducing repetition, the rules update the content of checklists and EISs by specifying that emerging areas, such as hazardous waste and alternate energy resources, are covered. The rules give recognition to and provide clearer treatment of impacts on shoreline, urban, and public service elements than the existing guidelines.

8. Earlier and better public notice. In addition to early participation through scoping and early review procedures, the rules strengthen and clarify public notice, including newspaper publication and posting on-site, and encourage additional public notice and involvement.

9. SEPA REGISTER. The rules upgrade the SEPA REGISTER to create a way for interested citizens to find out about SEPA actions which may affect them and to provide agencies and applicants with a uniform method of providing notice.

### III. BACKGROUND

#### Synopsis of the Proposed Action

The Commission on Environmental Policy, created in 1981, has completed its statutory responsibilities to review and recommend needed improvements in the SEPA process. These proposed rules have been developed by the Commission as a result of an open public process and comprehensive review of SEPA, directed by the state legislature.

These proposed rules have been forwarded to the state Department of Ecology (DOE), to be considered for adoption. SEPA authorizes DOE to utilize proposed rules developed by the Commission and requires DOE to adopt "uniform rules" for implementing the act. DOE must hold public hearings on proposed rules under the administrative procedure act and consider comments on their merits before final rule adoption.

#### Basis of the Proposed Rules and Legislative Intent

The legislature established a bipartisan Commission on Environmental Policy in 1981 to review SEPA. The legislature instructed the Commission to study and make recommendations to:

... establish methods and means of providing for full implementation of the Act in a manner which reduces paperwork and delay, promotes better decision making, establishes effective and uniform procedures, encourages public involvement, resolves problems which nearly ten years' experience with the Act has revealed and promotes certainty with respect to the requirements of the Act. (Section 1, Chapter 289, Laws of 1981 (ESSB 4190), RCW 43.21C.200.)

The Commission was directed to:

... propose amendments, if considered necessary, to the State Environmental Policy Act of 1971 and the administrative rules interpreting and implementing the act. (RCW 43.21C.202(7).)

As a result of its study, the Commission proposed legislation (SSB 3006) in its Initial Report of the Commission on Environmental (January 1983), along with a set of draft rules, and held four public hearings across the state on its recommendations. SSB 3006 was enacted substantially without amendment by the legislature and signed by the governor on April 23, 1983. SSB 3006 contains specific direction on the contents of these rules (Section 7, Chapter 117, Laws of 1983 (SSB 3006), RCW 43.21C.110.)

SSB 3006 directed DOE to adopt new SEPA rules and authorized DOE to utilize rules proposed by the Commission. The Commission completed its work in June 1983 after inviting and incorporating public comment on its draft rules and ensuring consistency between its proposed rules and the recently enacted statutory amendments.

These rules would replace the guidelines issued by the previous Council on Environmental Policy on January 16, 1976 (WAC 197-10), and apply more broadly. Those guidelines assisted agencies in carrying out SEPA's most conspicuous requirement, the preparation of environmental impact statements (EISs). Unlike the guidelines, these rules apply to more than just the EIS and related procedures.

SEPA is intended to help public officials make decisions that are based on an understanding of environmental consequences and to take appropriate actions to protect, restore, and enhance the environment. These rules tell agencies what they must do to comply with SEPA's policies and procedures and to carry out the broad purposes of the act.

The Commission took an extraordinary approach in developing this 1983 amendatory legislation. This approach and the composition of the Commission reflects the close connection between the development of these rules and legislative intent as an overall reform package.

The rule revisions and the proposed statutory amendments were developed simultaneously as part of the Commission's comprehensive two-year review. In this process, the proposed rule changes were developed prior to the proposed legislation, so that the reforms proposed and authorized by SSB 3006 would be publicly known and could be considered before enacting the legislation. In addition, this approach meant that legislative changes could be limited to those amendments which were felt necessary to authorize new rule provisions. It is the Commission's intention that the recent legislative enactments and these rules be read together and implemented consistently.

The purpose of the Commission's final report is to provide important and needed legislative and administrative history on the reforms.

#### Commission Process.

The Commission was greatly assisted by several hundred people in the past two years who provided suggestions on how to make the SEPA process work better. In public meetings which were held in September 1981, the Commission invited testimony from a broad array of public officials, organizations and private citizens, affirmatively involving SEPA's critics as well as its friends.

Among those represented were the Washington Environmental Council, Sierra Club, League of Women Voters, Washington Forest Protection Association, Association of General Contractors, Washington Association of Realtors, Seattle Master Builders, Chamber of Commerce, Washington Association of Cities, Washington State Association of Counties, and state agencies. Scientists, scholars, and the general public were there.

A second set of hearings was held eighteen months later, after the Commission had recommended legislation and a draft set of rules. Four public hearings were held across the state in January at Seattle, Olympia, Spokane, and Yakima. Again, the range of organizations and individuals testifying was equally broad.

There was consensus at the January 1983 public hearings among widely diverse witnesses. All expressed the view that SEPA benefitted the public. Equally widely shared was the view that the process had become needlessly cumbersome and should be improved. Witness after witness said that the length and detail of EISs made it extremely difficult to distinguish the important from the trivial. The degree of unanimity about the direction of the Commission's recommendations was such that, at its hearings in Spokane, city officials, environmental representatives, and an unusual coalition of some 40 industry and labor groups endorsed each other's comments. A week earlier, at the public hearing in Yakima, county planning directors and attorneys, the League of Women Voters, and realtors and industry groups expressed the same sentiments.

The Commission process is described further in the Commission's report. In addition to the four public meetings in 1981 and the four public hearings in 1983, the Commission held 18 meetings. All of these meetings were open to the public, and every meeting had an opportunity for public comment. The Commission members discussed many of the recommendations in great detail.

Most of the staff work of the Commission was done by the Commission's advisory committee and its drafting committee (composed of members of the Commission and its advisory committee). After the initial meetings, the Commission established a large and diverse advisory committee, as authorized by statute, to develop recommendations to the Commission. The advisory committee was composed of nearly 100 people, and divided into five technical committees. The advisory committee members conducted a line-by-line review of the existing statute and guidelines. These technical committees developed recommendations for the Commission's consideration over a period of a year and a half.

More than 100 meetings were held by the Commission's drafting committee and the technical committees and subcommittees of its advisory committee. All of these were open to the public, and many interested citizens participated.

The Commission published its draft of the rules in January, 1983, after 18 months of detailed review of the SEPA process and consultation with many groups and individuals mentioned, as well as study and consultation on the experience of other states and the federal government. The Commission received further comments during its January hearings and the legislative process on the draft rules. In addition, after the enactment of SSB 3006, the Commission sent another letter of invitation to all of the diverse interests on the Commission's co-chairs committee and major organizations testifying at the legislative hearings to invite further comment on any clarifications which might be needed in the rules as a result of the statutory enactment.

These rules are the result of this two-year study and legislative process.

Source: Final Report of the  
Commission on Environmental Policy

SECTION BY SECTION ANALYSIS OF THE  
PROPOSED SEPA RULES (WAC 197-11)

INTRODUCTION

The Commission's proposed SEPA rules are found in Appendix B. As described elsewhere in this report, the proposed rules are the result of a two-year comprehensive review and of legislative amendments to SEPA.

A set of rules is, by definition, "generally applicable". Consequently, rules govern a wide range of activities. Because SEPA applies to the activities of all government agencies of Washington state, these rules have a very wide application. People are often curious about how a rule was developed or how it would apply in a particular instance. This section by section summary would be extremely long if it tried to explain the possible applications, variations, or alternative provisions that were considered in the drafting of these rules (some of these are mentioned in the preceding preface to this analysis). At final meeting, as well as at prior meetings, the Commission directed the staff to focus on certain areas in preparing this analysis for the final report.

This section by section analysis highlights some of the factors considered by the Commission in proposing these rules. This section tries to provide additional background on the intent of the provisions. This section analysis treats the first seven Parts of the rules in detail because they represent the main changes. The technical material in the last few parts are very similar to the existing guidelines and are therefore only briefly discussed. The forms, which are new, have been simplified so that they should be readily understandable.

FORMAT OF THE RULES

Often, an applicant for a government approval or a citizen interested in a project wants to know how the SEPA process works. Agency staff may be very helpful in explaining the process, but people may want to read rules for themselves to be sure they understand what is required of them or of other people. Many government officials use the SEPA process every day to make decisions. They too need to have a set of rules that is well-organized and readable.

A great deal of thought was given to organizing and writing the SEPA rules so that the rules could be read, understood, and used by a wide range of people -- from people who are unfamiliar to SEPA to those who work with the law every day.

The reorganization from the existing guidelines reflects this emphasis on making the rules more readable. The rules are divided into 11 "Parts", plus an index included with this report. The Parts and the index are designed to help the reader find the section of interest promptly. Each Part contains a statement of purpose to explain why that Part is relevant to the process.

The first Part generally describes SEPA's purpose and how SEPA works. It is not a regulation. It simply gives the reader an overview of the SEPA process and the rest of the rules. The reader will be able to understand the concepts and terms used in the rules better.

Parts 2 through 7 are the basic procedures for the SEPA process. They comprise about half of the rules. Part 2 contains general requirements that apply to SEPA compliance. Parts 3 - 7 follow the SEPA process roughly in chronological order. Part 3 covers what is sometimes called the "front end" of the SEPA process: the use of SEPA in early planning and the decision whether an environmental impact statement is required. Part 4 covers the environmental impact statement, which is prepared if a proposal has a significant environmental impact. Part 5 deals with agency and public participation in the SEPA process, including notice and comment on environmental documents. Part 6 covers the use of existing environmental documents, including supplemental studies. Part 7 covers agency decisions and appeals.

It would be impossible for the rules to be exactly in chronological order, because the SEPA process is like any planning process: its progress depends on many factors and is not simply a straight line from start to finish. There are often starts and stops, revisions and improvements, as a proposal gets refined. The environmental review process under SEPA is a way of identifying and included environmental factors in the decisions that an agency is making. Generally speaking, an agency's SEPA process is only as good as the decisionmaking process it accompanies.

Also, some decisions about reorganization had to be made. For instance, commenting on EISs would come later chronologically than commenting on DNSs. However, it made more sense to consolidate most of the notice, comment, and consultation procedures in one place (Part 5) than to put the applicable requirements with each environmental document. Not only were there some basic similarities on requirements for commenting (such as commenting specifically and within the time periods), but it is easier for citizens, applicants, and agency staff to look at one place in the rules for this information.

Parts 8 through 11 contain more technical material, such as definitions, lists of specific categorical exemptions, detailed procedures for selecting lead agencies, and a compilation of forms for environmental documents. Although these provisions are very important, they were moved to the back of the rules because, in the existing guidelines, they confront the reader with a discouraging mass of technical material right at the beginning. The rules may contain more cross-references as a result, but the overall effect is to put the kind of technical material that is more appropriate as an appendix in the back of the document.

The forms deserve special note because of the effort made to simplify them. In addition to a new environmental checklist, the other forms have been written in plain English, and each one contains the name, address, and phone of the person responsible for the document. Special effort was made to have the forms as matter of fact as possible. For example, the Commission even debated the signature block on the environmental checklist, concluding that the legalistic jargon in the existing checklist should be replaced by a plain

statement that the person signing the checklist understands that the lead agency is relying on the answers. If anything, the bluntness of the new language in the checklist introduction and signature block may result in better attention than the former legal-sounding 'small print'.

There are a number of other ways the format has been improved. The last two or three digits of each form, for example, correspond with its companion regulatory section. The WAC numbers correspond with the Part numbers for Parts 3 - 7 (this was not possible for all of the Parts) and correspond with the hundred series in the existing guidelines (WAC 197-10) to maintain as much continuity as possible with the existing guidelines and ease the transition to the revised rules (e.g., EISs are in the '400 series' of section numbers).

## PART I PREAMBLE

The two sections in this Part are informational in nature and do not have regulatory force. As noted in the introduction, they are included in the rules to assist the reader in understanding SEPA's overall purpose and process.

### WAC 197-11-010 Purpose of these Rules.

This section emphasizes SEPA's twin focus: its procedural mandate (considering environmental consequences) and its substantive mandate (taking appropriate actions to protect, restore, and enhance the environment). In short, the act requires public officials to think about environmental impacts, and to act accordingly. The phrase "appropriate actions" is used to indicate that SEPA does mandate a particular substantive result, and that a decision on a given proposal will depend on weighing and balancing relevant factors, including other essential considerations of state policy in addition to environmental concerns. By the same token, this section makes clear that SEPA includes an affirmative mandate to preserve and enhance the environment. (See Section by Section Summary of SSB 3006 and 197-11-030.)

The first sentence states, simply and directly, that SEPA establishes a state environmental policy and means for carrying out that policy. The second sentence informs the reader that SEPA's environmental protection mandate is part of the authority of every agency (SEPA's "supplemental" mandate). The third sentence reminds the reader that SEPA is primarily a government management law: it requires government decisions and actions to reflect attention to environmental values. SEPA regulates the private sector by affecting those private actions requiring government approval. The essential purpose of the rules, therefore, is to tell agencies what they must do to comply with SEPA's policies and procedures. This in turn informs applicants and other interested citizens of SEPA's requirements.

### WAC 197-11-020 Overview of the SEPA Process.

This section provides an overview for the reader and the general public on the SEPA process. It explains the basis for SEPA's substantive policy mandate (subsection 2) and its procedural mandate (subsection 3).

This section explains that the focal point of the act's procedural requirements is a question of significant environment effects. This section explains the "threshold determination," including categorical exemptions, the environmental checklist, and determinations of significance or nonsignificance. This section explains the "scoping" process leading to a draft and final "environmental impact statement" (EIS). This section also explains the relationship between environmental documents and an agency's decision.

Consideration was also given to including a graphic illustration of the SEPA process for the reader. Such a figure is included in this report (Figure 1, page 16), and the Department of Ecology may wish to consider its inclusion in the final rules.

## PART 2 GENERAL REQUIREMENTS

The regulatory requirements of these rules begin in this Part. Certain basic principles and procedures apply to the SEPA process. The provisions in this Part are generally applicable to the SEPA process. Subsequent parts deal with variations or more detailed direction for different aspects of the SEPA process. For example, Part 3 on threshold determinations contains certain time periods applicable to the preparation of threshold determinations. Similarly, the environmental checklist (197-325 and 1325) specifies the content of environment review for threshold determinations, while Part 4 specifies the content of EISs.

The provisions in this Part are the foundation, or building blocks, of the SEPA process. To use an analogy to SEPA, one can say that Part 2 "overlays" the SEPA process.

The provisions of this Part have been designed to be consistent with the remainder of the rules. Thus, where a cross-reference to another rule is cited in this Part, it should be referred to because it governs the applicability of the requirement noted in this Part (except for references given "for example").

The WAC numbers of key sections in this part are retained to the extent possible (e.g. 055, 060, 100), as they are in other parts (e.g. 440, 444, 660), in order to assist a smooth transition to the new rules. In addition, the '100' and '200 series' of sections numbers are not used in order to reserve room for possible future provisions, and in order to continue the use of the '300 series' for the threshold determination.

WAC 197-11-030 Authority.

This section contains the recitations required by the Administrative Procedure Act, including the authority for issuing the rules. This section makes several other observations essential to interpreting and using the rules.

This section notes that: (1) the statute requires these rules to be given substantial deference interpreting the Act; (2) the rules impose uniform

requirements on all agencies (which, in some cases, allow for local options); (3) each agency must adopt SEPA procedures consistent with these statewide rules; (4) these rules replace the previous guidelines in WAC 197-10 and, unlike the previous guidelines, apply to more than just the environmental impact statement process; and (5) the provisions of these rules and the act must be read together as a whole in order to comply with the spirit and letter of the law. This section also cross-references the section governing the effective date of the rules (197-11-1290), which states that the agencies have 180 days to implement these rules.

These additional points are essential to understand the broadened authority of these rules included in the recent statutory amendments. As noted in the preface to this analysis, there was previously some question whether the term "guidelines" carried an advisory connotation, and whether local agencies were required to follow the statewide administrative procedures for the act. RCW 43.21C.110(1) was amended to add the term "uniform rules" to make clear that one of the important reforms is a consistent set of mandatory regulations applying to all agencies. This amendment still allows the department of ecology to issue other kinds of guidance on SEPA, such as "guidelines" and its annual handbook update.

It should be noted that state and local agency SEPA procedures are still required in order to account for variations in the programs and procedures of individual agencies, so that each agency can develop and implement SEPA in a fashion which is integrated with its own particular missions, and activities. (The term agency "SEPA procedures" is used instead of statewide "SEPA rules" to distinguish between the umbrella statewide rules and each agency's own procedures (see 197-11-1122).)

#### WAC 197-11-035 Definitions.

This section refers the reader to Part 8 for the definitions used in this chapter. As noted above, the definitions are located at the back of the rules, with the more technical material, in order to improve readability.

This section emphasizes an important reform, namely, that the terminology established in these rules shall be uniform throughout the state as applied to SEPA (some terms may have other specialized meanings under other laws). In an effort to assist the reader to use the various parts of the rules together, there are a number of cross-references throughout the rules. The constant repetition of the acronym "WAC" appeared cumbersome in the text of the rules, and all references in these rules to chapter 197-11 WAC are simply cited to 197-11. The code reviser may determine that it is necessary to reinsert the "WAC" in each cross-reference in the publication of the final rules in order to maintain conformity of style in the code, but it is hoped that this simplified format will assist the reader to review the proposed rules, and might ultimately be an acceptable format for these rules in the code.

#### WAC 197-11-040 Policy and Mandate.

This section encapsulates SEPA's substantive and procedural policy and mandate, so that agencies and the public better understand and use SEPA in the

decisionmaking process. Although this section notes the policies and purposes set forth by SEPA, it was felt extremely important to have such a concise section in the rules themselves, because the rules tend to be the most frequently used document for SEPA practitioners.

WAC 107-11-050 Lead Agency.

This section, requiring early designation of lead agency, was moved to the front of the rules, because subsequent rules will refer to the lead agency and its responsibilities. The lead agency concept is a key concept in the effective and efficient administration of the SEPA process. There are a number of places where a balance must be struck between the roles and responsibilities of the lead agency and other agencies, and these relationships are discussed at the appropriate points in the rules. In addition, the existing guidelines contain more than a dozen highly technical provisions for designating a lead agency. As with the definitions, categorical exemptions, and forms, these sections have been moved to the latter part of the rules and are cross-referenced in this section.

Subsection 3 makes clear that the lead agency is the only agency responsible for making the threshold determination and preparing and deciding the content of EISs. It is the intention of this section that, in a situation where there are joint lead agencies, the nominal lead agency (197-11-1245) has these responsibilities.

WAC 197-11-055 Timing of the SEPA Process.

This section and the following section (197-11-060) are essential provisions, which were carefully developed to improve the SEPA process and clarify existing ambiguities. A detailed analysis of both of these sections would require considerable space. This analysis highlights aspects of these sections.

Subsection 1 stresses that the basic precept of the SEPA process is its integration with agency activities at the earliest possible time. This ensures that the act's basic purpose and policies are met, and that the SEPA process helps to produce decisions that reflect environmental values, avoid delays later in the process, and try to resolve potential environmental problems early.

Although there is no question that SEPA imposes a specific set of requirements in addition to those which may be specified in other planning or permitting laws, the more SEPA is administered in conjunction with and as an integral part of routine agency activities, the greater likelihood that environmental factors will be incorporated into planning and decisionmaking. One of the problems identified in the Commission's review was that SEPA compliance sometimes became segregated from the normal agency planning and decisionmaking process, resulting in unnecessary paperwork and procedures for their own sake, rather than as a means to better decisions. The theme of integration can be seen throughout these rules, from document preparation to the decisionmaking and appeals process.

As population has grown and resources have become scarcer, government regulation has increased over the past century, and multiple agencies and permits are often involved in a given project. One of SEPA's stated purposes is to "coordinate plans, functions, programs, and resources" to meet environmental policies (RCW 43.21.C.020(2)). This section and the following section are designed to assist in meeting that purpose and in meeting the legislature's direction to "establish methods and means of providing for full implementation of the act in a manner which reduces paperwork and delay, promotes better decisionmaking, establishes effective and uniform procedures, encourages public involvement ...." (RCW 43.21C.200).

Subsection 2 contains the basic statement on the timing of the SEPA process. It draws heavily from the existing guidelines and, like the new federal rules, places its focus on the concept of a "proposal." The term "proposal" (a proposed action) focuses on the timing of governmental activity. A proposal is defined as that stage in the development of an action when an agency is presented with an application, or has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and the environmental effects can be meaningfully evaluated.

The three key criteria for a proposal are that: (1) an environmental document is prepared as an integral part of an actual agency decision, not as an abstract, scientific, or general study document or device for public review; (2) the decisionmaking process, and therefore the environmental document, should be reviewed at the onset as a set of options or alternative means of accomplishing a goal or objective (recognizing, of course, the limitations of the approach in the context of a proposal by an applicant for a particular project, e.g., 197-11-440(5)); and (3) environmental review must be early enough to influence decisions, but cannot occur until environmental impacts can be meaningfully evaluated.

Although there may be factual questions of precisely when a proposal exists, this provision helps to provide specific criteria which can resolve many issues regarding the timely application of SEPA requirements. The question is more likely to arise for government proposals where the discrete action of submitting an application may not occur. The criterion of having a goal and options for accomplishing it helps to ensure that consideration is early, before reasonable alternatives have been discarded. The phrase "actively preparing to make a decision" was used rather than, for example, "actively considering" alternatives, because the latter phrase could be interpreted to mean that a proposal exists too early, before there is any reasonable likelihood that the agency will be making a decision on ideas being kicked around in the agency. The section also emphasizes that a "proposal" under SEPA must involve an action whose environmental impacts can be meaningfully evaluated; otherwise, there would be no reason to conduct environmental review because useful information would not be able to be given to decisionmakers.

This provision preserves the distinction drawn by the courts between "proposed actions" which have been described to the point of legally requiring environmental review, and merely "contemplated actions," which have not. This section also requires that appropriate consideration of environmental information be completed before an agency commits to a particular course of action, and references 197-11-070, governing what action may be taken before the

environmental review process is complete. Subsection 3 provides more specific direction on the timing of environmental review for certain common types of proposals, namely, applications to agencies, and rulemaking.

Subsection 4 contains an important concept to promote earlier environmental review, before requiring applicants to prepare detailed project plans and specifications. This section requires agencies to adopt procedures for environmental review and for preparation of EISs on proposals of applicants at the conceptual stage as compared with the final design stage. This approach benefits applicants, citizens, and agencies staff, by providing an earlier environmental review process before so much money is spent on a project that considerations of alternatives or mitigation measures become difficult. The reason that this section requires agencies to specify an appropriate process in their procedures--rather than specifying the details in these rules--is to recognize the diversity of state and local agency permits and to allow each agency to develop and integrate such a procedure with its own licensing activities. In other words, this section does not mandate a particularized procedure, but it does require an agency to provide an applicant with the opportunity for environmental review prior to requiring the submission of detailed project plans and specifications.

This section stresses that agencies with jurisdiction should coordinate their SEPA processes and that environmental documents and analysis be given appropriate consideration along with economic and technical considerations by reviewing them along with planning documents to the fullest extent possible, thus helping to implement all of the procedural provisions of SEPA.

#### WAC 197-11-060 Content of Environmental Review.

This section states that environmental review consists of three items: the range of proposals, alternatives, and impacts to be analyzed.

The term "range" is used in order to recognize that there are numerous variations to each of these three items, and not every variation need be addressed in the environmental review process.

The prior section (197-11-055) covers when SEPA review occurs. This section covers what is reviewed. Although there is an interrelationship between these two subjects, the SEPA process can be more easily understood and used by initially analyzing these two topics as distinct concepts which complement each other.

This section stresses that the content of any given environmental review will depend on each particular proposal, on an agency's existing planning and decisionmaking process, and on the most useful timing for evaluating alternatives and impacts. As noted earlier, specific cross-references control except when they are given as an example.

Subsection 4 describes what "proposals" consist of (197-11-055 described when proposals exist). This section emphasizes that the way in which the proposal is defined is very important. One of the problems identified with the existing guidelines has been the confusing language on the concept of a "total proposal." The concept was extremely valuable in the early and mid-70's, when

it was more common to "segment" or "piecemeal" a proposal into its constituent parts, to avoid SEPA compliance. The existing guidelines, however, do not provide a clear enough standard to define proposals that require analysis in a single environmental document.

Any action can be viewed as a series or range of human activities that will occur at different times and different places and that are related to one another in any number of ways. Many proposed actions have an obvious or intuitive unity which allows decisionmakers and the public to characterize or comprehend the action. For example, most people would view a proposal to construct a high-rise office tower on a specific downtown block as a "single" proposal, even though its impacts could cover a wide geographic area. Many actions, however, are not so obvious or easy to characterize. For example, some proposals have many facets, such as a hydro-project with energy, irrigation, water supply, and related transmission facilities, or the demolition or closing of a government facility in one part of a city to its relocation or construction someplace else. The proposed rules focus attention, quite directly, on the basic question which must be asked: Are the proposed actions related to one another closely enough they should be discussed in the same document?

The rules conclude that proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document. Thus, "single" actions and "connected" actions must be evaluated in the same environmental document (also see 197-11-960(2)(A)). "Similar" actions may be evaluated together if an agency determines that doing so would improve the planning and decisionmaking process.

By recognizing a mandatory category of connected actions, the rules provide specific criteria to: (1) ensure that all facets of a proposed course of action are reviewed, and (2) implement the prohibition against segmenting or piecemealing actions, as has been recognized by the courts. By recognizing a discretionary category of similar actions, the regulations encourage agencies to use the environmental review process creatively in conjunction with planning and decisionmaking, but without broadly expanding SEPA's environmental requirements or imposing unreasonable legal obligations (as has been recognized in several state cases which have been declined to require agencies to consider actions which are merely contemplated or possibly foreseeable, but which were not essentially a single course of action).

Subsection 6(f) also provides guidance on how agencies may wish to define proposals if they are analyzing similar actions in a single environmental document. It should be stressed that this subsection is optional and would not require agencies or applicants to analyze similar actions or to require applicants to prepare environmental documents on proposals other than their own. The Commission felt that it was important to include this provision in the rules, however, in order to encourage agencies to think more broadly about environmental issues, especially for their own governmental plans and projects. This provision on similar actions is much like the provision in the federal rules on this subject.

In addition, subsection 6(g) continues the existing provisions providing additional protection against segmenting actions simply because some or all of

the actions are categorically exempt under the rules. Subsection 6(g) is more specific than subsection 6(e); the criteria for connected actions in 6(e) can assist in carrying out subsection 6(g).

The proposed rules do not include separate category of "cumulative actions" because of the problems in defining that concept. It should be stressed that cumulative impacts must be addressed in EISs (see 197-11-960(2)(c)); this is what the existing guidelines and the state courts have required as well.

The concept of a cumulative "action," in contrast to a cumulative "impact", did not seem to provide either greater certainty or protection to the SEPA process. Virtually any proposal in a given geographic area interacts with other proposals in that area. Efficient permit processing and agency decisions could not occur if every proposal had to wait for every other one to be processed. Objective criteria could not be developed for distinguishing between "similar actions" that would require analysis in a single document and those that would not. It was felt that the definition of "action," which expressly includes nonproject actions such as policies, plans, and programs, and the explicit provisions for connected actions and nonexemption of a series of exempt actions (as well as the prohibition against phased review to segment or avoid cumulative impacts in subsection 7), would be sufficient to cover those situations which, as a matter of law, required environmental review in a single document.

The rules also require related proposals to be identified in the checklist (Part A) and EIS (197-11-440(5)(c)(iii)), so that agencies are alert to these other activities, can identify cumulative impacts if any, and can improve intergovernmental coordination. This record will also help agencies to defend their determinations on the scope of a proposal.

Subsection 5 explains the range of impacts to be considered in environmental reviews. This subsection cross-references certain key definitions to implement with legislative intent. It emphasizes that long-term effects must be considered, including those that are likely to exist at least over the lifetime of a proposal. Subsection 5 emphasizes that indirect effects are covered, such as those resulting from growth caused by a proposal, and that environmental impacts do not necessarily respect political boundaries and that a proposal's impacts may extend beyond an agency's jurisdiction, including beyond state boundaries (such as into another state, country, or the ocean, for example). This subsection explains that the range of impacts analyzed in an EIS may be wider than the impacts for which mitigation measures are required of applicants. One example would be where there is a significant impact and the reasonable mitigation measure may be additional land use plans or regulations by the lead agency, which would be completely beyond the ability of an applicant to legislate, but which the EIS should nonetheless discuss.

Subsection 6 on alternatives provides an overview and highlights key provisions on the treatment of alternatives in the SEPA process, which are generally focused on the EIS process, although the environmental checklist and threshold stage do focus in particular on mitigation measures. As noted in the definition of scope, "mitigation measures" are considered one type of "alternative." For purpose of the environmental checklist, they are the type of alternative that is the focus of environmental consideration. In contrast, one

of the main purposes of an EIS, where there is a significant impact, is to make the effort to analyze and focus on reasonable alternative "courses of action" (a substantially different way of addressing the proposal's objective) in addition to mitigation measures and the no action alternative.

Subsection 7 on phased review assists agencies and the public to focus on issues which are ripe for decision and to exclude from consideration issues already decided or not yet ready to be decided. It enables agencies to tailor the environmental review process to the decisionmaking process, in order to avoid duplication, delay, and paperwork and ensure that the significant environmental issues are considered at the appropriate time in the planning and decisionmaking process. The Commission carefully considered the relationship between the phased review provisions and the possibility of improper segmenting or piecemealing of proposals, and not only designed these provisions to be consistent with the rest of 197-11-055 and 060, but included specific protections in (c) and (d) of this subsection.

One of the problems with the existing guidelines and cases has been that the courts have been increasingly frustrated in figuring out complicated proposals that are implemented over time. Some cases have sanctioned "appropriate piecemealing." The Commission felt that this trend would not only undermine basic SEPA principles, but has become a source of confusion, uncertainty, and ambiguity. In developing this section of the rules, applicants expressed concerns that explicit recognition of phased review might result in agency's prolonging the environmental review process by constantly demanding new and supplemental environmental documents. Concern was also expressed, from the other perspective, that inappropriate piecemealing could occur under this concept. The Commission believes that the protections built into this section, which is similar to NEPA's "tiering" provisions, will help place environmental review in the context of the overall decisionmaking process and will focus attention on the significant environmental issues which are ripe for decision, thus improving the nexus between SEPA and the agency decisionmaking. In addition, phased review can be particularly constructive for all those involved in the environmental process to make nonproject environmental reviews more useful (see, for example, 197-11-443) and to handle areas of special design concerns or multiple permit coordination (see, for example, 197-11-740). As suggested by a recent federal review and guidance on NEPA, those are areas -- along with scoping, format, and appeals -- where the annual SEPA workshops may be very useful for regular exchange of experiences and information among public officials, applicants, and the general public.

#### WAC 197-11-070 Limitation on Actions During SEPA Process.

This section provides a simple and basic standard for deciding whether governmental actions may occur before the environmental process is complete, namely, whether actions have an adverse environmental impact or limit the choice of reasonable alternatives. This section carefully uses the criterion of "any" adverse impact (rather than "significant", which would be too narrow), and the word "limit" alternatives (rather than "foreclose", which would be too narrow, or "prejudice", which would be too broad). Some actions, such as the securing of options, actually have the effect of maintaining or increasing available options. In addition, this section makes clear that various planning and development activities may nonetheless occur at the planning stage.

WAC 197-11-080 Incomplete or Unavailable Information.

This section provides important direction on the difficult question of what to do when information on significant impacts is unavailable or unknown. The basic requirement is that if information on significant impacts is essential to a reasoned choice among alternatives and is not known, and the cost of obtaining it are not excessive and beyond the ordinary or customary costs of obtaining information for impact analysis, the information must be obtained and included in environmental documents.

Environmental documents must also indicate gaps in information on significant impacts where the information is lacking or substantial uncertainty exists. The rules were drafted with the recognition that there are almost always uncertainties about information and impacts. This section is meant to focus on important gaps and significant impacts.

Sometimes information is not available or is not feasible to obtain, but the agency needs to make a decision in the absence of vital information. In this case, the agency shall weigh the need for the action with the severity of possible adverse impact. If the agency proceeds, it must generally indicate in the appropriate environmental documents its worst case analysis and the likelihood of occurrence, to the extent this information can reasonably be developed. The rules use the phrase "generally indicate," recognizing that it is difficult to be very specific at such a level of uncertainty. The requirement for a worst case analysis means that a description is given of how bad things could reasonably be, recognizing that the nature and detail of this description will depend on the extent the information can reasonably be developed. A worst case analysis is intended to be a reasonably probable worst case, and not be an analysis based on an extreme application of Murphy's Law (whatever can go wrong will go wrong).

Neither this section nor any other in these rules is intended to require as a matter of law either a strict numerical probability analysis or a formal risk analysis. The appropriate methodology is intended to be governed by the rule of reason. It should be stressed that the purpose of the SEPA procedures is to help make informed decisions about environmental consequences. An environmental document is meant to serve the difficult job of translating technical analysis, whether in the natural sciences or environmental design arts, into information which can reasonably be understood and used in the public policy arena. Environmental documents are not intended to models of dissertations in predictive physical science, but, rather, an effective way to help public officials and citizens understand the significance of impacts, built upon relevant interdisciplinary analysis.

WAC 197-11-090 Supporting Documents.

The rules emphasize that agencies should use existing studies and incorporate the material by reference in each stage of the environmental review process. This section provides a general authorization to do so, with specific safeguards for ensuring that the material is identified and available for inspection. This section makes clear that such documents are part of the agency's record of compliance with SEPA. This is extremely important in order to reduce unnecessary size in EISs. The Commission firmly believes that SEPA requires

rigorous, high-quality environmental analysis and believes, with equal vigor, that the resulting environmental document should be concise and readable so that the environmental information obtained is in fact used in the decisionmaking process. Thus, the intent of this section and of these rules is to recognize that shorter environmental documents supported by the necessary analysis meets the letter and spirit of SEPA. This section recognizes the length and complexity of an agency's planning and decisionmaking process and recognizes the fact that an adequate record, including consideration by decisionmakers of the salient environmental documents, is what SEPA requires.

#### WAC 197-11-100 Information Required of Applicants.

This section summarizes the information that may be required of applicants, and essentially follows the existing guidelines. It makes clear that applicants may prepare environmental documents and submit information, and may be required to do so under the safeguards stated in the rules. Although an agency has the option to include additional analysis not required under SEPA in an EIS, an agency cannot require an applicant to furnish (provide or pay for) such information, which is consistent with legislative intent. WAC 197-11-315 and 420 make it clear that the evaluation of a checklist and the content of an EIS are the agency's responsibility.

### PART III THRESHOLD DETERMINATION

One change in format should be noted because it reflects a change in semantics, if not concept. Under the existing guidelines, a determination that a proposal is categorically exempt has not been considered part of a "threshold determination". Under the existing guidelines, a "proposed action" is not considered an "action" subject to SEPA compliance if it is categorically exempt (WAC 197-10-040(2)). The Commission felt it was confusing to give such a basic term as agency "action" a highly specialized meaning (sometimes called a "legal fiction"), and that it would be difficult for the general public to understand.

Additional confusion was caused by trying to establish independent meanings for the terms "major" and "significant". Under the existing guidelines, for example, it could be said that proposals that are not categorically exempt are "major actions", and that exempt proposals are simply "actions". The legislative history of NEPA, however, indicates that the terms "major" and "significant" were not intended to have independent meaning, but, rather were intended to reinforce each other (this is the interpretation given to the terms in the federal NEPA Regulations, 40 CFR 1508.18).

The proposed rules would simplify this analysis into one basic statutory test, which is, essentially: does a proposal significantly affect the environment? If so, an EIS is required. (See 197-11-305.)

The determination whether a proposed action fits within a categorical exemption is therefore treated as part of a threshold determination, although documentation is not required (197-11-310(5) and 320(2)). The term "action" is not subject to as many specialized meanings, and the terms "major" and "significant" are not given separate meanings. Although this may require agencies to

revise existing procedures, including being more specific about the "threshold determinations" on which agency appeals will be conducted, agencies would have to revise their procedures in any event to conform to new SEPA rules, and this adopts a more straightforward approach. It should be noted that the definition of "action", while no longer a highly specialized legal fiction, still contains certain criteria and limitations in order to assist the user understand the nature of government activities subject to environmental review.

WAC 197-11-300 Purpose of This Part.

This Part specifies SEPA requirements prior to the preparation of an EIS, or when no EIS is required. It covers the "threshold determination": the decision about whether a proposal crosses the threshold of environmental significance and therefore requires an EIS.

The vast majority of proposed actions do not have significant environmental impacts and thus do not require EISs. This Part establishes a system of categorical exemptions and provides a way to review nonexempt proposals and to mitigate their environmental impacts, thus integrating SEPA into early planning and ensuring appropriate consideration of SEPA policies either before impact statements are prepared or in those instances when they are not required.

WAC 197-11-305 Whether EIS Required.

The proposed rules would simplify the basic test for determining whether an EIS is required by going back to basics: this section directs the user of the rules to determine if the activity under consideration meets the basic terms of the statute itself for requiring an EIS. The section dissects the six components of the statutory phrase and cross-references to the definition of each term. If an activity fits within these components, then an EIS must be prepared. The activity must fit within all of these components, except that it may fit within either legislation (subsection 2) or other major actions (subsection 3).

WAC 197-11-310 Threshold Determination Required.

This section states when the threshold determination must be made, who makes the determination, and how it is documented.

This section continues the existing guideline stating that a threshold determination should be made within 15 days and that an applicant is entitled upon request for a date by which the determination will be made. Unlike the existing guidelines, the rules do not specify how short or long the time may be, because this was not identified as a problem to date.

WAC 197-11-315 Threshold Determination Process.

This section explains the process that the responsible official uses to make a threshold determination. The responsible official may decide that the proposal is categorically exempt under Section 320, may decide that the impacts have previously been analyzed in an existing environmental document and adopt

that document for the threshold determination, or may determine the proper timing for environmental analysis and commit to conducting environmental review at that time.

In making the determination, the responsible official must follow the rules governing the use of the environmental checklist, if one is used (a checklist is not required for categorically exempt proposals and for proposals on which there is agreement that an EIS will be prepared, 197-11-325(1)). It should be emphasized that a checklist is not required to be used, and no documentation is required, for a determination that a proposal is categorically exempt (see 197-11-310(4)). The responsible official applies the criteria in Section 305 and in this section to the facts, to the checklist, if one has been prepared, and to any additional information which may be obtained, and must consider mitigation measures which will be implemented by an agency or an applicant.

This section also states certain qualitative factors to be considered in making threshold determinations. These qualitative considerations essentially provide some additional prose explanation on the meaning of the term "significant" for purposes of deciding whether the impacts warrant the preparation of an EIS.

#### WAC 197-11-320 Categorical Exemptions.

This section specifies the requirements for "categorical exemptions" (defined by 197-11-835 and expressly authorized by the legislative amendment in 1974 and 1981).

One problem with the existing guideline on categorical exemptions (WAC 197-10-170) is that it appears to provide absolute exemptions, without consideration for extraordinary circumstances, until one reads for several pages and discovers WAC 197-10-190, where additional limitations are explained. (The ambiguities caused by the Downtown Traffic case would not have occurred, for example, if the court had simply applied WAC 197-10-190.) In addition, the current guidelines lack a definition of categorical exemptions, which has led to confusion by agencies and the courts. This section is meant to explain plainly and in a manner consistent with the recent statutory amendments to SEPA and long-standing practice by most agencies what is involved in categorical exemptions. The Section by Section Summary of SSB 3006 and the floor Qs & As on SSB 3006 explain categorical exemptions in more detail.

This section states that if the proposal fits within the provisions of Part 9 of the rules (the specific exemptions themselves), the proposal is categorically exempt except as provided in this section. A categorical exemption is plainly described in the definitions (197-11-835) as a type of action, specified in these rules, which does not significantly affect the environment.

Although documentation is not required for categorical exemptions, agencies may note on applications or other documents that a proposal is exempt and include such information in their files. Given the large number of routine actions to which exemptions apply, imposing new documentation, notice, or circulation requirements (where none have existed since categorical exemptions

were created in this state in the mid-'70s) was viewed as an unnecessary paperwork burden.

This section specifies the circumstances in which a proposal--which would potentially be exempted under these rules--shall not be exempt. In other words, if a proposal fits within these circumstances, it cannot be considered for inclusion under a categorical exemption. In summary, these two circumstances are if a proposal is a segment of a proposal (197-11-060(4)(g)) or is not exempt under the provision for environmentally sensitive areas (197-11-1125). This section continues allowing agencies to petition the Department of Ecology to add or delete exemptions, as in the existing guidelines.

It was felt that these provisions and circumstances are sufficiently broad to provide adequate safeguards, especially considering that the adoption of the categorical exemptions themselves require review under the administrative procedure act (APA), and that the courts can, on a case-by-case basis, review whether proposals actually fit within the scope of a categorical exemption in the rules and whether a particular exemption itself is valid.

WAC 197-11-325 Environmental Checklist.

This section requires agencies to use the environmental checklist to decide if an EIS is required, except in certain situations, such as categorically exempt proposals or proposals in which the agencies and applicants agree that an EIS will be prepared. The agency must follow the instructions in the introduction to the checklist, independently evaluate the checklist responses of applicants, and conduct initial review of the checklist without requiring additional information. By providing for the consideration of mitigation measures, the checklist is a useful means for identifying and avoiding or reducing environmental impacts that are not significant.

This section makes clear that the existence of environmental impacts does not mean that a proposal's impact is significant. One problem with the existing environmental checklist is that people add up the number of questions in which environmental impacts are checked, and, if the number is substantial, conclude that the impacts are significant. This is one of the abuses intended to be corrected by the new checklist and rules. Likewise, a proposal may have a single impact, and that impact may be significant. In short, the number of environmental elements which have environmental impacts is not an indication of a proposal's significance.

WAC 197-11-330 Additional Information.

This section specifies the additional analysis that an agency may conduct based on its initial review of the environmental checklist.

WAC 197-11-340 Mitigated DNS.

This section expressly authorizes agencies to incorporate into its threshold determination mitigation measures that an agency or applicant will implement (also see 197-11-720 on mitigation measures, including the requirement to document any mitigation and monitoring decisions).

Subsection 2 creates an early notice provision, which allows applicants to request lead agencies to indicate whether a determination of significance (DS) appears likely. If so, the applicant may clarify or change features of the proposal to respond to the agency's reasons for such an indication. The section intends for agencies to indicate, if requested, both whether a DS appears likely and for what reasons (what appear to be the significant impact(s) and why). The term "clarify" is used, along with "change," because in many instances information or description provided on a checklist is in summary form, and additional clarification by the applicant or agency proposing the action will reveal that possible environmental impacts may not occur, or that adequate mitigation measures have already been provided for in the proposal or will be included in detailed designs. The lead agency must make a threshold determination based upon the clarifications or changes. The subsection also makes clear that, if a proposal continues to have a probable significant adverse environmental impact, even with mitigation measures, an EIS must be prepared.

In accordance with other provisions in the rules for incorporation by reference and adoption of other documents, the changes or clarifications must be stated in writing, but the documents may be attached to or incorporated by reference into documents previously submitted, and an entirely new checklist or revision need not be submitted.

The Commission considered specifying the precise documentation or requiring applications and/or checklists themselves to be revised, but concluded that this would not only be impractical, but could also add substantial uncertainty to the SEPA process. Frequently a proposal would simply be clarified rather than revised, and this could be reflected in the project description for the project being approved. In many instances, for example, a variety of licenses may be sought, and a requirement of resubmission may cause time periods for processing applications to start over again, thereby causing delay. Furthermore, the types of proposals that may be mitigated vary so widely, from building permits to direct government projects or plans, that a specific form of documentation could inhibit the goal of integrating the SEPA and decisionmaking processes. On the other hand, some record of compliance is necessary. It was felt that requiring the changes to be attached to or incorporated by reference into the documents previously submitted would provide adequate protection, coupled with the protection that mitigated DNSs issued as a result of early review requested by applicants would have public notice and a 15-day comment/waiting period.

Whether or not an applicant uses the early notice process provided in subsection 2, the lead agency may identify and specify mitigation measures that would allow it to issue a determination of nonsignificance (DNS). If the proposal is clarified, revised or conditioned to include those measures, the lead agency must issue a DNS.

The major reason for this section is a recognition that everyone benefits from proponents being allowed to improve their proposals from an environmental perspective early in the process. Another reason for this provision was fairness: a concern by applicants that, unless there was a formal process subject to scrutiny, agencies could make certain demands upon applicants in exchange for granting a DNS, without the demands being reasonably related to

their proposals' actual impacts. Environmental and citizen groups sought this provision to ensure that mitigation measures were considered and implemented for proposals on which checklists are prepared but EISs are not required.

The procedures for issuing a mitigated DNS are explained in the section on DNSs. This section is located before the section on DNSs because it falls logically and chronologically between the analysis of the checklist and the issuance of a DNS.

WAC 197-11-350 Determination of Nonsignificance (DNS).

The proposed rules substantially simplify the provisions for preparing and issuing DNSs. In addition to authorizing mitigated DNSs (previous section), the section eliminates the "proposed" DNS and, instead, has a single DNS. The DNS has more explicit and better public notice and review.

As in the existing guidelines, the DNS and checklist must be sent to other agencies with jurisdiction, and an agency with jurisdiction may assume lead agency status only within the 15-day period for reviewing the DNS. An agency may not act on a proposal for 15 days after DNS has been issued in four situations: (1) if there is another agency with jurisdiction; (2) the demolition of a structured facility not categorically exempted under certain provisions; (3) the issuance of clearing a grading permit is not exempted under the rules; or (4) a DNS which has been issued after an early notice indicating a DS is likely or as a result of the withdrawal of a DS and the substitution of a DNS (197-11-340(2) or 360(4)).

These four types of DNSs were selected because they involved either interagency coordination, essentially irrevocable decisions (demolition clearing), or protection against potential abuse of certain types of mitigated DNSs. It was felt to be a reasonable balance to encourage mitigated DNSs in order to bring environmental considerations into the process early and reduce red tape, but to provide for a brief period in which the public or other agencies may comment on such DNSs to ensure that careful consideration has been given to a proposal's impacts. In this way, proponents of a project benefit from a faster review time with more emphasis on the pending decision, and members of the public and agencies benefit from having environmental considerations brought into the process early with a focus on substantive matters and the opportunity to review these.

The notice requirements strike a reasonable balance between costly and unnecessary notice for every DNS and criticisms of the current guidelines for failing to require public notice of any DNS. It was considered especially important and fair to have notice for those essentially irrevocable actions and for mitigated DNSs that were at one point considered to have, or likely to have, significant impacts.

The criteria for withdrawing a DNS have been simplified to correspond with the same two basic criteria used for any supplemental review under these rules (197-11-660). It was felt fair to require an applicant to pay an agency for any subsequent checklist to be prepared if the applicant procured a DNS by misrepresentation or lack of material disclosure. This would lend greater

public confidence to the environmental review process. Subsection 4 relates to withdrawal of a DNS.

WAC 197-11-360 Determination of Significance (DS).

As in the previous section, the new rule consolidates the issuance of a DS as well as its withdrawal. In addition, this section covers the scoping notice, because the DS itself serves as a scoping notice in order to reduce paperwork duplication and delay. Not all agencies issue DSs, however, and sometimes an agency or applicant knows from the beginning of a proposal that an EIS will be needed. In these instances, the rules make it clear that the agency may use a similar notice which meets the requirement of this section, whether or not it is termed a "determination of significance." "Determination" is used, rather than "declaration", because the document is a record of the agency's decision on significance, not merely an announcement.

WAC 197-11-390 Effective Threshold Determination; Assumption of Lead Agency Status.

This section makes clear that the responsible official threshold determination is final and binding on all agencies unless it is subsequently changed, reversed, or withdrawn. The exceptions are that the threshold determination is not final for 15 days after being issued for those special circumstances listed in 197-11-350 (3); does not apply if another agency with jurisdiction assumes lead agency status; does not apply if officially withdrawn by the responsible official; and does not apply when reversed on appeal.

Much consideration was given to whether the finality of a threshold determination should be delayed pending any appeal procedures, but the conclusion was reached that such a provision would unduly extend processing time under SEPA, and that proposals should be allowed to proceed at their own risk in the face of appeals (as is typically the case in administrative decisionmaking). In particular, other decisionmaking processes of other agencies with jurisdiction may be delayed a considerable amount of time pending the completion of threshold determination appeals.

PART 4 ENVIRONMENTAL IMPACT STATEMENTS

WAC 197-11-400 Purpose of EIS.

This section sets forth a straightforward statement of the purpose of the environmental impact statement (EIS). It emphasizes the EIS's role as a vehicle for ensuring that SEPA's policies are considered (an "action forcing" mechanism). It stresses the importance of informing decisionmakers and the public of reasonable alternatives and significant environmental impacts through short documents avoiding excessive detail. The intent of the rules is that it cannot be overemphasized that the volume of an EIS does not bear in its adequacy, and large documents may even hinder the decisionmaking process. This section stresses that impact statements are more than merely disclosure documents, but are intended to be used by officials in conjunction with other relevant materials and considerations, to plan actions and make decisions.

WAC 197-11-402 Implementation.

This section contains what might be considered the "Ten Commandments" of impact statement preparation. These ten rules apply to the preparation of all impact statements and emphasize how impact statements can be concise and meet the purposes of the statute at the same time.

WAC 197-11-405 Types of EISs.

This section explains that EISs come in three basic forms: draft, final, and supplemental.

In the past, people have referred to and tried for years to define "programmatic" EISs, "mini" EISs, and any number of other labels applied to impact statements. Most of these labels refer to the subject matter -- the proposed action -- of the impact statement, and do not reflect a different "type" of impact statement. One of the important conceptual reforms in the rules is to refocus attention on determining the proper scope of an EIS, rather than trying to devise artificial labels for impact statements that happen to be broader or narrower, depending on the subject matter.

This section makes clear that all impact statements must follow the scope, content, format, and style for impact statements contained in Parts 4 through 6 of these rules, unless expressly provided otherwise in these rules. This section also explains the basic purpose of each of the types of impact statements, but the reader should refer to the cross-referenced sections for the actual requirements on document preparation.

WAC 197-11-406 EIS Timing.

This section contains a brief statement of the timing of EISs, which essentially reiterates and is intended to be used in conjunction with the section on the timing of the SEPA process, in 197-11-055. It emphasizes that EISs must be prepared early enough to be used in decisionmaking rather than to justify decisions already made.

WAC 197-11-408 Scoping.

This section provides the required procedures for scoping. Scoping means determining the scope of an environmental impact statement, namely the range of actions, alternatives, and impacts to be analyzed in an EIS. A great deal of consideration was given to whether a scoping process should be included in SEPA and, if so, what it should entail. Concern was expressed that the inclusion of a scoping process could add more time to preparation of an EIS. In addition, consulted agencies would have time or budget constraints in responding to scoping requests, and lead agencies would have additional responsibilities to organize the scoping process and to notify participants.

The Commission also identified the following potential advantages to scoping:

1. It should help to eliminate the discussion of irrelevant issues in an EIS and thus shorten the documents and improve their readability and credibility.

2. It should encourage use of previous EISs and existing environmental information and incorporation by reference, and thus avoid duplication.

3. It will improve coordination and integration with other environmental reviews and permit requirements with the EIS process.

4. It should improve communications between project proponents, agencies, and interested persons by providing a form for information exchange. The process of negotiating acceptable solutions to environmental problems should receive more trust, since scoping information and decisions will be discussed openly with more involvement from others.

5. It should provide a means for those who comment on draft EISs to review whether their earlier comments (during scoping) were considered.

6. It should improve the quality of an EIS by obtaining expertise from agencies and interested persons at an early point in the EIS process.

7. It will encourage consulted agencies to study the proposal at an early stage and to provide comments or suggestions which can be more readily considered by the proponent.

8. It would help support the scope of an EIS as determined by the lead agency.

Given these advantages, scoping was made mandatory in the SEPA legislation and rules. The concerns about balancing possible additional time and paperwork requirements, however, were taken very seriously. As a result, the proposed rules take a two-tiered approach. WAC 197-11-408 contains the requirements for scoping. These include (1) inviting agency and public comment; (2) identifying reasonable alternatives and probable significant adverse impacts; (3) eliminating from detailed study those issues which are not significant; (4) working with other agencies to identify and integrate environmental studies required for other government approvals with the EIS, where feasible.

It should be emphasized that meetings or scoping documents, including notices that the scope has been revised, may be used but are not required. The lead agency is also directed to integrate the scoping process with its existing planning and decisionmaking process. The reason that special documents are not required in scoping, nor is the agency required to prepare or distribute a "scope of work" for the EIS, is that the agency could end up spending more time trying to comply with a gloss or overlay of procedural requirements on scoping without focusing on the real purpose, which is to decide what goes in an EIS and to write it. This section also requires lead agencies to revise the scope of an EIS if substantial changes are made later in the proposal or if there is significant new information on the proposal's significant impacts.

Because the proposals which are subject to SEPA are generally smaller in scope and size than those federal proposals requiring EISs under NEPA, the SEPA scoping process is somewhat more simplified than the typical federal NEPA scoping process. The point of this scoping process is to allow public and agency comment. The scoping notice or DS specifies the method and time period for commenting.

The Commission intended the scoping provisions to allow the lead agency maximum discretion to decide how to take comments, and this may range from providing a telephone number for an official to take phone calls on comments, to sending out information packets or holding meetings. The method is left to the agency's discretion, and is not intended to impose a minimum procedural requirement, other than ensuring that there is an initial opportunity for comment. The scoping process is also not intended to prevent agencies or applicants from beginning the preparation of an EIS, even while the scoping process is underway, as long as the EIS preparers realize that revisions in the scope may be made as a result of comments (and any contracts for EIS preparation should not impede this).

Extensive consideration was given to whether a time period should be placed on required scoping (197-11-408) and whether appeals should be allowed on the scope prior to issuance of the EIS. In brief, the time period was rejected as being too inflexible. Not only might the time take less than 30 days, but minimum time periods tend to become the maximum, and conversely. Appeals at this point were rejected as likely to cause substantial delay in the process and to make scoping too adversarial, and it was strongly felt that the EIS itself would be a reflection of the agency's treatment of scoping comments. In addition, there is the opportunity for comments on the draft EIS to mention unaddressed scoping concerns, and this would occur prior to a final EIS and decision.

#### WAC 197-11-410 Expanded Scoping (Optional).

The rules authorize lead agency, on a proposal by proposal basis, to expand the scoping process to include information or methods of consultation that may be helpful in using scoping creatively and effectively in preparing EISs. For example, agencies may wish to use scoping questionnaires, have meetings or workshops, organize a team of agency staff or consultants, develop interagency memoranda integrating the EIS process with other governmental reviews and approvals, or inviting participation from various levels of government. It is expected that agencies will often find it helpful to use one or more of these techniques in scoping.

The rules make clear that expanded scoping is intended to promote inter-agency cooperation, public participation, and innovative ways to streamline the SEPA process, and that there are no specified procedural requirements to be used. This is intended to give the lead agency the maximum discretion to decide when and how the scoping process should be expanded beyond required scoping in 197-11-408. This discretion is given to the lead agency in order to encourage innovation in the SEPA process and discourage second-guessing or imposing penalties on agencies for using the process creatively. As a result, it is the Commission's clear intention that agencies' EIS processes and scoping

should not be found inadequate or an abuse of discretion for deciding whether or not to expand the scoping process or how any expanded scoping is conducted.

In addition, as part of an expanded scoping process, an applicant is entitled to be consulted and have a date by which the lead agency will determine the scope, to the extent permitted by the available information. This provision is included in expanded scoping to strike a balance between maintaining an agency authority to decide whether expanded scoping will occur (since the agency is legally responsible for the adequacy of the EIS), but providing a safeguard to applicants that it will not be used to delay the process.

The intent of scoping is to minimize the formalities (other than those required by the rules). Agencies are not expected to designate their process as "scoping" versus "expanded scoping" (although they may do so), but that they will simply use some of the techniques in this section as may be helpful on a case-by-case bases.

WAC 197-11-420 EIS Preparation.

This section essentially continues the existing section in the guidelines on preparation of environmental impact statements.

WAC 197-11-425 Style and Size.

This section therefore provides the action forcing mechanism to ensure that EISs are in fact concise documents. The existing guidelines contain clear language emphasizing focused, usable impact statements. Unfortunately, fear of challenge has lead to excessively long and detailed documents. The Commission felt very strongly that specific requirements had to be included in the rules to limit the size of environmental impact statements. The rules do not reduce the rigorous analysis needed to back up EISs. This section provides guidance on the normal length of impact statements, as well as a requirement that the text of an EIS (its two main sections) shall not exceed 75 pages in length, except for proposals of unusual scope or complexity, in which case the text shall not exceed 150 pages (as explained further below).

The usefulness of the SEPA process to decisionmakers and the public has been jeopardized in recent years by the length and complexity of environmental impact statements. In accordance with the act, a primary objective of the regulations is to ensure that these documents are clear, concise, and to the point. Numerous provisions in the rules underscore the importance of focusing on the major issues and real choices facing decisionmakers and excluding less important matters from such detailed study. Other sections in the rules provide that certain technical and background materials developed during the environmental review process may be appended but need not be presented in the body of an EIS.

The Commission recognized the tension between the requirement of a thorough review of environmental issues and a limitation on the number of pages that may be devoted to the analysis. The Commission believes that the limits set in the regulations are realistic and will help to achieve the goal of more succinct and useful environmental documents.

Others suggested that page limits might result in conflict with judicial precedents on adequacy of EISs, that the proverbial kitchen sink may have to be included to ensure an adequate document, whatever the length. The Commission trusts and intends that this not be the case, particularly in light of RCW 43.21C.031 and 110(1)(d). Based on its study and wide range of experience of the Commission and Advisory Committee members, the Commission is acutely aware that in many cases bulky EISs are not read and are not used by decisionmakers. An unread and unused document quite simply cannot achieve the purpose the legislature set for it. The only way to give greater assurance that EISs will be used is to make them usable and that means making them shorter. By way of analogy, judicial opinions are themselves often models of compact treatment of complex subjects. Departmental option documents often provide brief coverage of complicated decisions. Without sacrifice of analytical rigor, we see no reason why the material to be covered in a SEPA EIS text cannot be covered in 75 pages (or 150 pages in extraordinary circumstances).

These page limits do not prescribe all of the details on how those page limits may be met. For example, some EISs may be single spaced or double spaced, or some may be printed. The purpose of the rules was not to get bogged down in every conceivable detail of publication, but to require plainly and unequivocally that the document which is circulated to decisionmakers and the public as an EIS is short enough that a public official or member of the public will be inclined to pick up the document and read it. The department of ecology has ample ability to specify further details through its handbook or guidelines if necessary or if abuses result, after experience with the page limit requirement.

Many members of the Commission felt that even 75 pages was long, and that the section must make clear that the length should normally range from 30-50 pages, and may be shorter. The section emphasizes that these are outer limits, and that an EIS text should usually be shorter. This is obviously more feasible for EISs covering fewer impacts, which should become more common. The rules also recognize that useful information may be placed in appendices or separate documents, and that these must be readily available to agencies and the public during the comment periods. Appendices of less than ten pages may be attached to the EIS itself, but longer documents must be bound separately, in order to keep the EIS itself a short, usable document.

WAC 197-11-430 Format.

The proposed rules would vastly simplify the format in the existing guidelines for EISs. The first section of every EIS would be a fact sheet, containing about a dozen items of vital information for agencies and the public, such as the date comments are due and the location of EIS technical reports. A table of contents and summary section would provide an overview to the EIS, followed by its two main sections, a comparison of the environmental impacts of the alternatives, and an analysis of the affected environment, significant impacts, and mitigation measures. The EIS distribution list would follow, as well as any appendices.

Every EIS is preceded by a cover memo which highlights the environmental factors especially noteworthy at the time the document is issued. The cover memo must be less than two pages and is essentially a briefing memorandum for the reader. In addition, a letter from the lead agency may proceed and be included in the EIS, as is often customary.

WAC 197-11-435 Cover Memo.

Commission members felt strongly that a one- to two-page document at the front of the EIS highlighting the options and environmental issues facing the decisionmakers would be one way to ensure that the EIS would be used in decisionmaking. It is intended to focus on key environmental trade-offs among alternatives and be a selective, comparative overview of the environmental factors which the responsible official or agency staff believe are especially noteworthy at the time the document is issued. It differs from the summary in the EIS because of its format, selectivity, and brevity. The cover memo is not considered part of the EIS for adequacy purposes, in order to encourage the responsible official to feel free to highlight issues without being criticized for selecting some subjects rather than others.

WAC 197-11-440 EIS Contents.

This section specifies the required contents of environmental impact statements. The format, or way in which these contents are covered, may vary as allowed in 197-11-430, especially subsection 4.

The "introduction" in the existing guidelines is replaced with a "fact sheet" in the new rules. The fact sheet serves a similar purpose, namely to provide the most basic information about the proposal and the EIS, including various procedural dates such as commenting, hearings, and scheduled decision dates on the proposal.

The table of contents is expected to list documents which are appended, adopted, or serve as technical reports for the EIS, and include the list of elements of the environment, indicating those elements or portions of elements which do not involve significant impacts.

The summary of the EIS describes the content of the particular EIS, briefly stating the proposal's objectives, specifying the purpose and need to which the proposal is responding, and stressing the major conclusions, significant areas of controversy and uncertainty if any, and environmental issues. The summary provides a way to give a more representative description of the impact statement than the cover memo, but may be considerably abbreviated from the text of the EIS itself, which may run as long as 75 pages, or in the case of particularly complex proposals, 150 pages.

The first main section of the EIS, "alternatives including the proposed action" describes and presents the environmental impacts of the proposal and alternative courses of action in comparative form, focusing on the relative importance of the likely environmental consequences in helping to provide a basis for choice among options. This section describes the proposal and reasonable alternatives and presents a comparison of their principal environmental impacts.

Only reasonable alternatives and significant impacts must be discussed, and the section must devote sufficiently detailed analysis to each reasonable alternative to permit a comparative evaluation of the alternatives, including the proposed action. The amount of space devoted to each alternative may vary. One alternative, including the proposed action, may be used as a benchmark for comparing impacts among alternatives. Although graphics may be helpful, a matrix or chart is not required. A range of alternatives or a few representative alternatives, rather than every possible reasonable variation, may be discussed. The EIS may briefly indicate the main reasons for eliminating alternatives from detailed study.

Because of the difficulty in second-guessing private development activities, this section continues to interpret the meaning of reasonable alternative for a private project on a specific site, similar to the existing guidelines, where the lead agency is not required to evaluate alternatives other than the no action alternative plus other reasonable alternatives for achieving the proposal's objective on the same site. This limitation does not apply to rezones, unless the rezone is for use allowed in an existing comprehensive plan which was adopted after review under SEPA, in which case the environmental impacts of the land use for the site would already have been analyzed in adopting the comprehensive plan. (This does not avoid the need for adequate site specific impact analysis on the proposal.)

The second main section of the EIS -- "affected environment, significant impacts, and other mitigation measures" -- describes the existing environment affected by the proposal and alternatives, the significant impacts of the alternatives including the proposed action, and reasonable mitigation measures not included in the preceding section. This subsection is not intended to duplicate the analysis in the prior section. Although some information on impacts may be repeated, this section is intended to present the significant impacts, while the prior section is intended to compare the impacts.

The second main section of the EIS describes the principal features of the environment, presents the impacts, and indicates the intended environmental benefits of mitigation measures. This section incorporates discussions of the existing land use and shoreline plans applicable to the proposal and how the proposal is consistent and inconsistent with them; energy requirements and conservation potential, including the use of alternate and renewable energy resources; natural or depletable resource requirements and conservation potential; and urban quality, historical and cultural resources, and the design of the built environment, including reuse and conservation. Special emphasis is given to impacts which pose long-term risk to human health of the environment, such as disposal of toxic or hazardous material.

In keeping with the recent statutory amendments, significant impacts on both the natural and built environment must be analyzed, if relevant. Discussion of significant impacts must include the cost of public services that may result from a proposal, as well as significant environmental impacts upon land and shoreline use, which includes housing, physical blight and the significant impacts of projected population on environmental resources.

It is important to understand that population is treated in descriptive terms (as it is in the statute) because population is not an "impacted" environmental medium, such as earth, air, or water. Environmental impacts are the effects that projected population will have on environmental resources. Environmental impacts on people are covered, for example, under the various elements of the environment, such as "environmental health" (which includes the health of all living things, including people), land and shoreline use (which includes noise, aesthetics, housing), and so on. These cover impacts on people through their physical environment (in contrast to impacts on people through the social, political, economic, religious, or other environments). As noted in the earlier section on legislative history, the U.S. Supreme Court has stated that adverse impacts on people are not synonymous with adverse environmental impacts, and this comports with the legislative intent of SEPA.

An EIS may include appendices. The appended material may be bound with the EIS if it is less than ten pages; otherwise, it must be bound separately. Comment letters and responses must be circulated with the final impact statement as specified by 197-11-560, but, may not be bound with an EIS unless the material is less than ten pages. Subsection 8 explicitly recognizes the legislative history in adopting the recent SEPA statutory amendments that the lead agency may, at its option, include in an EIS or appendix the analysis of any impact relevant to the agency's decision, whether or not environmental. Such impacts may be based on comments received during the scoping process, and their inclusion, as with combined documents, does not bear on the adequacy of an EIS under SEPA.

#### WAC 197-10-442 Contents of EIS on Nonproject Proposals.

This section gives more specific guidance on EISs on nonproject proposals. This section emphasizes that analysis of nonproject proposals should focus on alternatives, although the lead agency is not required to examine all conceivable policies, designations, or implementation measures.

#### WAC 197-11-443 EIS Contents When Prior Nonproject EIS.

This new section was added to provide additional guidance on the relationship between analyses of nonproject proposals and subsequent project environmental documents. This section emphasizes that material covered by the prior nonproject EIS should not be duplicated in a subsequent project EIS.

This section was viewed as needed to emphasize means to improve the use of environmental analyses on nonproject proposals. An agency often will not know the proposals, or types of proposals, that may later result from a nonproject action. Thus, identifying future project reviews may not be possible when the nonproject analysis is prepared. An agency amending a shoreline management master program in 1983, for instance, cannot predict exactly what projects might be proposed in 1986, but could still use all or part of the EIS on the plan in analyzing future project actions. Subsection 1 is intended to remind the reader that the criteria for phased review and for supplements (197-11-060(7)(b)-(d) and 660(2)) would be applicable, recognizing that the specific identification of subsequent proposals may be impossible (in other words, 197-11-060(7)(e) and 440(4), for example, should not be interpreted too

literally in these situations, since the specific future actions may well not be known when a nonproject EIS is prepared). Subsections 2 and 3 provide direction for using EISs on nonproject proposals. It is intended that the same purpose that is served EISs under this section would be accomplished for other environmental documents by using the adoption provisions of 197-11-640 in conjunction with the phased review provisions of 197-11-060(7).

One of the fundamental issues addressed by the Commission was whether to continue the requirement for EISs on nonproject proposals, and, if so, how to improve the usefulness of such analyses. Some felt that EISs on nonproject proposals were not helpful and did not generate much public interest, resulting in a duplication of effort when a subsequent project was proposed. Some wanted to increase attention to nonproject analyses, and eliminate subsequent project analysis if a project were certified to be consistent with the nonproject proposal.

The Commission found that the types of nonproject actions were quite varied and included many other proposals besides comprehensive plans and zoning codes. The Commission concluded that environmental analysis of nonproject proposals is important, because future actions will be based on them, but also concluded that the focus, format, and use of nonproject analysis needs improvement. The Commission felt that EISs on nonproject proposals could be especially useful if focused on the main alternative approaches under consideration, with more flexibility in format. WAC 197-11-442 was revised to reflect this emphasis. The Commission also felt that the more nonproject EISs could be used in the decisionmaking process, the more attention would be paid to them by all concerned. WAC 197-11-443 was added to encourage the use of nonproject EISs for subsequent project actions, and to help reduce duplication, while ensuring the analysis is valid for the subsequent project proposal. The Commission felt that this would improve decisions and reduce paperwork, duplication, and delay, without some of the cost and bureaucratic problems identified with 'certification' approaches.

#### WAC 197-10-444 Elements of the Environment.

This section includes the elements of the environment which must be considered under SEPA. These elements correspond with statutory direction and are included in the environmental checklist, as well as the scope of environmental impact statements. They have been substantially simplified by consolidating the more than 20 elements in the existing guidelines into nine major headings, divided into two areas: the natural environment and the built environment. The natural environment means those aspects of the environment typically referred to as natural elements or natural resources, such as air, earth, water, wildlife, and energy. The built environment refers to the elements of the environment which are generally built or made by people as contrasted with natural processes. Further discussion is provided in the analysis of 440, 448, and Section by Section Summary of SSB 3006 and the floor Qs & As on SSB 3006.

The Commission carefully considered the list of elements of the environment, to ensure their being logical and consistent with legislative intent. Although some duplication is possible (for example, between drainage or utili-

ties, and erosion or water quality), EISs preparers are urged to consolidate discussion and to reduce possible duplication of analysis for a given proposal.

In many cases, depending on the number of significant impacts, some or all of these elements of the environment may be consolidated or combined to simplify the EIS format, reduce paperwork and duplication, and improve readability.

#### WAC 197-10-448 Relationship of EIS to Other Considerations.

This section helps to explain the relationship and difference between the environmental impact statement and the overall balancing mandate of SEPA for decisionmakers to consider environmental factors along with other relevant factors in decisionmaking, such as the general welfare, social, economic, technical, and other considerations. SEPA includes essentially two aspects to the "balancing" mandate: 1) considering the tradeoffs among environmental impacts, such as deciding how to weigh and compare the different environmental impacts of a proposal and alternatives, such as water quality, energy conservation, fishery protection, farmland preservation, and so on, which may sometimes be in conflict with one another on the same proposal; and 2) tradeoffs between environmental considerations and other essential considerations of state policy, such as cost, racial equity, jobs, income, and so on. The Commission decided to maintain the existing distinction between the EIS, which analyzes environmental impacts for decisionmakers, and the decision itself, which involves consideration of broader factors than environmental impacts.

Some courts and citizens have wanted to use the SEPA and EIS process as the only decision tool. This approach blurs the distinction between SEPA's procedural and substantive provisions. In other words, there is a difference between the requirements to "consider" environmental values (procedural) and to "decide" on a proposal (substantive).

The EIS and other environmental documents required by SEPA are part of the act's procedural requirements: they analyze the environmental consequences of reasonable alternatives. Decisionmakers may have other "essential considerations of state policy" to weigh and are required to implement the state's substantive environmental policy set forth in SEPA "in a manner calculated to ... promote the general welfare ... and fulfill the social, economic, and other requirements of present and future generations of Washington citizens" (RCW 43.21C.020). This language was originally included in NEPA to provide for a balancing in decisions so that environmental concerns would not simply override other valid considerations of the general welfare.

Nothing in SEPA's procedural provisions (RCW 43.21C.030) requires a detailed statement on these other considerations. The procedures were enacted as "action-forcing" provisions to ensure that environmental factors received consideration, in light of the emphasis that public agencies traditionally gave to other factors, such as economic and technical considerations. In other words, the preparation of environmental analyses under SEPA provides needed environmental information, so that decisionmakers can then balance any other essential factors in making decisions. As the state courts have observed, an EIS provides the basis for agency officials to apply SEPA's substantive policies (i.e., to make the balancing judgment), because the EIS provides the necessary environmental information.

Local environmental officials stressed the need to clarify this point in the rules, because of concern that the EIS and the environmental review process would become overly politicized if other, non-environmental factors were required to be included in environmental documents. This is especially important for many local agencies in the state, where technical staff may see their role as preparing an impartial EIS for the locally elected officials who are the decisionmakers. Citizens also expressed concern that EISs be impartial and focused on environmental impacts, which is one of SEPA's purposes. Members of the business community were concerned that an environmental impact statement on a proposal not be found inadequate on the basis of discussion of non-environmental considerations.

Some people felt that any consideration of community importance should be required to be discussed in an EIS, but this was rejected by the legislature in considering the Commission's recommendations and SEPA's intent. The U.S. Supreme Court reached a similar conclusion recently in Metropolitan Edison v. People Against Nuclear Power, 51 LW 4371, 103 S. Ct. 1556 (1983) (see page 28 of this report). As noted above, and in subsection 4, agencies have the option to include additional analysis in EIS to assist in making decisions, but this is not required.

In addition, an agency may wish to use SEPA or the EIS process as its only decision document or tool, but doing so would be strictly based on a policy decision by the agency about its planning and decisionmaking process. SEPA does not require the EIS to serve such a role.

The term "socioeconomic" has caused considerable confusion in the implementation of SEPA, as the legislative history indicates. It originally referred to "growth" or "secondary impacts" (now more accurately called "indirect impacts"; see, for example, 197-11-060(5)(e) and 960(2)(c)).

The Commission and many commenters on the draft rules, from citizen groups to legislators, felt strongly that the term "socioeconomic" should be removed from SEPA usage because of the confusion it has caused. It should be noted, for those unfamiliar with the law, that the term was never in the statute or the existing rules. Subsection 2 tries to implement this, and the definitions in Part 8 intentionally do not define the word, in an effort to preclude its future usage.

Considerable effort was given to clarifying how the concept is meant to be applied in the context of SEPA. In addition to the affirmative approach of specifying the elements of the environment, the Commission felt it was important to provide some indication of the type of social and economic information that is not required to be analyzed in environmental impact statements, in order to provide greater certainty concerning SEPA's requirements.

The Commission is aware that certain economic information may be relevant as a backdrop to environmental impacts (for example, the abandonment of a downtown area because of new development outside of town). The legislative history, for example, clarifies but does not reverse the Barrie II case in that it supports the result in Barrie II (EIS required to discuss downtown physical deterioration caused by a proposed regional shopping center outside of town), although the court's reasoning was overbroad and appeared to overstate EIS

content requirements. The Section by Section Summary of SSB 3006 and the proposed rules make clear that urban physical blight caused by a proposal must be considered in preparing EISs.

Unfortunately, there has sometimes been extensive and costly economic forecasting and analysis for purposes of meeting EIS adequacy challenges, when reasonable assumptions of population and land use changes would suffice for purposes of conducting the necessary analysis of impacts upon environmental resources and developing reasonable mitigation measures. The rules require the significant adverse environmental impacts which are reasonably probable to be addressed, rather than being preoccupied with the causes of social change (such as political, economic, religious, legal, or technological conditions) that may have generated the population or land use changes causing impacts upon environmental resources. While such background information might be interesting or desirable for decisionmakers, the Commission concluded, as did the legislature, that an EIS can be required to carry only so much weight before its environmental protection purpose is diluted.

Because of the complexity of human activities and interaction with the environment, the Commission believes that the scoping requirement will serve a valuable role in helping to define the content of each EIS and to deal with remaining "gray areas".

WAC 197-11-450      Cost-Benefit Analysis

This section provides needed direction on the use of quantitative cost-benefit analyses, which have become increasingly popular in administrative decisionmaking. The section makes clear that a cost-benefit analysis is not required by SEPA, and that qualitative considerations must be taken into account if one is prepared and used.

WAC 197-11-455      Issuance of DEIS

This section explains how a DEIS is issued, including notice requirements and consideration of any extension of comment periods. Subsection 1 refers to 197-11-530, which lists the recipients of DEISs. The section shortens the comment period from 35 days in the existing guidelines to 30 days, and allows, but does not require, the lead agency to grant extensions up to 15 days. In adding an express requirement for agencies to consider extension requests, this section intends to continue the current practice of making extensions the exception rather than the rule, in order to ensure a prompt and timely EIS process, and does not affect an agency's discretion to deny extensions from other agencies or the public.

WAC 197-11-460      Issuance of FEIS

This section explains how an FEIS is issued. Subsection 2 allows an agency to issue a notice that an FEIS is available, rather than incurring the expense of sending a copy of the FEIS to agencies and people who received but did not comment on the DEIS. In order to ensure timely notice, subsection 3 ties the official date of issue to the date the notice of availability is given. Subsection 3 also reduces EIS expense by stating that sending an EIS to DOE satisfies the statutory requirement in RCW 43.21C.030(2)(d) to make a copy

of the FEIS available to the ecological commission and the governor (as a practical matter, these copies have usually been sent to DOE in any event).

## PART 5 COMMENTING

This Part consolidates the consultation and comment rules under SEPA. The act requires the responsible official to "consult with and obtain the comments of any public agency which has jurisdiction by law or special expertise with respect to any environmental impact involved [in such statement]" (RCW 43.21C.030(2)(d)).

In order to allow this consultation and comment to occur "[p]rior to making any detailed statement", the draft EIS was invented by the initial set of federal NEPA guidelines and incorporated into the subsequent state guidelines. This enabled the "detailed statement" (final EIS) to include "the comments and views of the appropriate ... agencies" (RCW 43.21C.030(2)(d)).

As a result of SSB 3006, SEPA now also requires the rules to include public participation in the "scope and review of draft environmental impact statements"; the act thus officially recognizes the "draft" EIS too (RCW 43.21C.110(1)(c)).

The title "Commenting" is used for this Part as a catch-all phrase for all forms on consultation and comment in the environmental review process.

### WAC 197-11-500 Purpose.

This section states the purpose of this Part, which has been broadened to include notice and comment on environmental documents, and not just draft EISs, as in the existing guidelines.

### WAC 197-11-502 Inviting Comment.

This section states the requirements to invite comments on environmental documents and public hearings. It should be noted that the notice and other requirements for appeals are included in 197-11-750, rather than this section, because appeals occur after a decision and are not really part of the commenting process; in addition, this section would become too lengthy by including appeals.

Subsection 1 stresses that agency and public involvement should be commensurate with the type and scope of environment document. Thus, notice and review of EISs, for example, is more extensive than for threshold determinations.

Subsection 12 clearly authorizes agencies to combine SEPA notices with other agency notices, as long as the SEPA aspect is identifiable. The preceding subsection notes that agencies are not limited by the required notice provisions -- although it is intended that agencies will always be considered to have given adequate notice by following the required notice provisions --

and that agencies are encouraged to use other reasonable methods to inform the public and other agencies (197-11-520).

WAC 197-11-504      Availability and Cost of Environmental Documents.

This section requires agencies to retain environmental documents and make them available in accordance with the state's public disclosure law. The waiver of fees in these rules may also include reducing fees.

WAC 197-11-508      SEPA REGISTER

Based on widespread comment, the Commission felt strongly that a reliable and uniform system of providing notice for SEPA documents was essential to improving SEPA's administration statewide. The proposed rules would substantially upgrade the SEPA REGISTER published by DOE, so that agencies and applicants would have a definitive and certain means of issuing adequate notice and members of the public would have a way to know about SEPA actions.

The state does not have a statewide document similar to the daily Federal Register or weekly federal "102 Monitor" (for NEPA filings). There is a great deal of interest among established environmental and community organizations, as well as among many jurisdictions and individuals, for a reliable way to receive timely notice of agency actions under SEPA. A revitalized SEPA REGISTER, on a subscription basis in order to enable its publication, was felt to be the most effective and equitable method available. Financial support for such a mechanism is essential.

WAC 197-11-510      Required Form of Notice

This section requires notice to be given in the SEPA REGISTER, in a newspaper of general circulation, and posting on site (if there is one). One of the problems with the existing guidelines is the lack of a definite and certain method of giving adequate notice. Agencies and applicants are frequently challenged for the adequacy of the notice they have given; similarly, citizens often do not receive or have a reliable way of obtaining notice. After considerable discussion, there was consensus that these three techniques would provide an efficient and effective basis for providing notice for the central items in the SEPA process (see 197-11-502 for a compilation of notice requirements). The expense of providing notice might increase somewhat (although newspaper publication and posting are quite common for many local land use actions), but this would be offset by the benefits of increased certainty and reduced costs for defending notice later in the process.

The requirements are meant to be read under the rule of reason. Newspaper publication for statewide proposals, for example, are not required (except for public hearings under 197-11-502(6)(b)), and publication for nonproject proposals is not intended to require publication in numerous newspapers. Similarly, posting on site is required when there is a specific property, and would not be required on a proposal located on many sites or along a linear or corridor route, for example.

WAC 197-11-520      Additional Notice. (OPTIONAL)

This section encourages agencies to use any reasonable method to inform the public, in addition to the previous section, or if the previous section does not apply.

WAC 197-11-530      Circulation of DEISs.

This section specifies the recipients of DEISs. It clearly encourages agencies to send a copy to persons, agencies, or organizations expressing an interest in the proposal or type of proposal being considered, as well as to libraries. Agencies may wish to provide additional specifics in their SEPA procedures.

WAC 197-11-535      Public Hearings and Meetings.

This section states when public hearings are required. Agencies may, but are not required to, hold public hearings unless requested to do so by enough people (subsection 2(b)) or unless their procedures require public hearings. The section also adds explicit sanction to more informal agency public meetings or workshops, which have often proven to be a very useful SEPA practice. In order to encourage meetings and workshops, it was felt inappropriate to place procedural requirements on them.

WAC 197-11-545      Effect of No Comment

This section emphasizes that people, including agencies, must comment within the required or requested time periods for environmental documents (not simply EISs). Subsection 1 is essentially the same as the current guidelines, which has been upheld by the courts. Subsection 2 does not purport to bar a commenter from "alleging any defects" in compliance. It does allow the lead agency to construe lack of comment as lack of objection to the environmental analysis.

A person could conclude that the environmental analysis is adequate, for example, and maintain during the decisionmaking process and on appeal that the proposal should be modified or rejected as a result. It was felt to be important, however, to encourage and receive comments on the adequacy of the environmental process on a timely basis, so that the substantive decisionmaking process could proceed. Subsection 2 makes clear that it depends on other agencies and members of the public having reasonable notice to comment on the documents, proposals, and impacts in question.

WAC 197-11-550      Specificity of Comments

This section consolidates the existing guideline sections (WAC 197-10-500 through 540) in the context of Part 5 and these rules. While it recognizes that the excellent approach of using consulted agencies in a highly structured manner was innovative and should continue, it also recognizes that there have been some problems caused by agency funding and resource limitations. The section emphasizes that comments should be focused on three areas: methodology, additional information, and mitigation measures.

The text of the section differentiates various responsibilities of consulted agencies, as compared with all agencies and with the public. The public is required to comment as specifically as possible.

WAC 197-11-560      FEIS Response to Comments.

This section states how an agency responds to comments in preparing a final impact statement. It streamlines and consolidates the existing guideline sections WAC 197-10-570 and 580, and places on emphasis on doing something in response to comments, rather than simply producing paperwork. It gives agencies greater latitude in the format of their response to comments.

WAC 197-11-570      Consulted Agency Costs to Assist Lead Agency.

This section continues to require the consulted agency to assume the cost of assisting the lead agency. The section makes clear that this requirement does not prevent agencies from agreeing to share resources to develop or provide environmental information in general or for purposes other than a consulted agency role under these rules.

#### PART 6 USING EXISTING ENVIRONMENTAL DOCUMENTS

This Part is more comprehensive and substantially simpler than the existing rules. WAC 197-11-640 explains the two basic ways to use existing environmental documents -- "adoption" and "incorporation by reference" -- and when and how to use them. Although 197-11-640 could suffice for purposes of using documents prepared under the federal act (NEPA), an explicit section was retained in the rules for purposes of clearly authorizing use of NEPA documents. WAC 197-11-660 explains the two ways to "supplement" existing environmental documents -- a "supplemental EIS" and an "addendum". WAC 197-11-670 allows the SEPA process and SEPA documents to be combined with other agency planning and decisionmaking.

WAC 197-11-640      Use of Existing Environmental Documents.

Although agencies often want to use existing environmental documents, the existing guidelines do not provide a clear way to do this. The Commission concluded that unnecessary paperwork, duplication, and delay could be reduced by encouraging proper use of existing documents.

The section provides procedures for one agency to "adopt" a prior environmental document or another agency's environmental document. Given the comprehensive nature of SEPA review, an environmental document on one proposal may have a great deal of analysis relevant to a subsequent or different proposal. Adoption allows this material to be used. Because of the improved checklist at the state level, and the relatively new requirement at the federal level for environmental assessments, it is essential, to be effective, for adoption to be allowed for all environmental documents, and not just EISs.

The key criteria for adoption are specified in subsection 3, and include an agency determination that the document being adopted has been reviewed and meets the adopting agency's environmental review standards and needs for its current proposal. The adopted document must be readily available to the public during comment periods, along with a brief description of the proposal for which the document is being used.

Agencies are allowed to adopt documents that are not final or may be subject to appeal, because any deficiencies may have no relationship to the parts or purposes for which the document is being adopted. Agencies are required to disclose this information, however.

Subsection 4 makes clear that the adopted document is not required to have gone through precisely the same procedural process as it would have, if the document were being created anew by the adopting agency. This is important to the use of adoption. If there were a few days' difference, for example, between a review period or appeal period of the originating agency and the adopting agency, it would be extremely inefficient to preclude its adoption or to go back to redoing the process at that point. Rather, the protections in subsection 3 were carefully designed to ensure proper SEPA compliance.

Subsection 6 makes it clear that agencies are not required to adopt a lead agency's DNS or FEIS when they act on the same proposal, because it is assumed that the lead agency's document suffices unless supplemental review is required. This subsection also allows an agency with jurisdiction to supplement a lead agency's FEIS, but only if the agency concludes that its written comments on the DEIS warrant additional discussion for purposes of its action. Concern was expressed that this might undermine the requirement for agencies with jurisdiction, such as wildlife agencies, to avoid participating early and fully in the EIS process. This is not the intent of this provision. This subsection does not relieve an agency of its responsibilities as a consulted agency. In addition, any supplementing under 197-11-640(6)(b) must be done at an agency's own expense and cannot be passed on to applicants, including other agencies.

WAC 197-11-650      Use of NEPA Documents.

This section covers the use of NEPA documents. In addition to using federal EISs, the adoption provisions of the previous section may be used for any environmental documents prepared under NEPA. Because some federal environmental assessments may have the scope and detail of state EISs, the rules allow such documents to be adopted to satisfy state EIS requirements as long as the adoption criteria are met (including circulating the document as an EIS; see 197-11-640(5)(b)).

The Commission determined that legislation was not needed for this section because of the broadened authority for the rules and the fact that the Commission was directed by the legislature to avoid statutory amendments unless necessary (see preface to the proposed rules). In addition, 197-11-650 does not conflict with the existing statutory section on using NEPA EISs (RCW 43.21C.150, which requires EISs to be used in lieu of state EISs). The current federal rules requiring environmental assessments are also different than the federal rules that were in effect when RCW 43.21C.150 was enacted.

WAC 197-11-660      Supplemental Environmental Review.

This section creates a single standard for requiring supplemental review (subsection 2), and establishes two documents that are used (subsections 4 and 5). This is broader than the existing guidelines, which only covered certain situations requiring supplements (WAC 197-10-650 through 695). It also consolidates and simplifies the subject into one section, rather than at least seven in the existing guidelines.

An "addendum" is meant to be a jack-of-all-trades. It is a means of having a document, with an official name and recognition, which can be used for many occasions where some additional environmental analysis may be necessary or desirable, but for which an EIS should not be required. The current guidelines do not provide a suitable vehicle, between the broad-brush checklist and the detailed EIS, for such additional environmental analysis.

WAC 197-11-670      Combining Documents.

This section encourages combining documents and integrating SEPA with existing agency planning, review, and decisionmaking. It remains vitally important for the page limits to be observed, however, or the environmental analysis will become lost in the paperwork and not be used by decisionmakers.

#### PART 7   SEPA AND AGENCY DECISIONS

This Part adds provisions on SEPA's substantive requirements to the statewide rules. It focuses on the use of environmental documents in decisions, including the exercise of substantive authority and mitigation measures, as well as the appeals process.

WAC 197-11-700      Purpose.

This section states the purpose of this Part.

WAC 197-11-710      Implementation.

This section requires agencies to consider environmental documents and to ensure that the range of alternatives in the EIS are considered by decisionmakers, and, conversely, that the range of alternatives being considered by decisionmakers are included in the EIS. This does not preclude an agency from placing conditions on a proposal differing from those in a checklist or EIS, as the environmental document provides the basis for agencies, applicants, and citizens to negotiate appropriate mitigation measures or conditions. Non-environmental factors may enter into an agency's final decision, for example.

WAC 197-11-720      Substantive Authority and Mitigation

This section, developed over a long period of intense scrutiny, represents a structuring of agency discretion in the exercise of substantive authority under SEPA. It was carefully designed to preserve SEPA's protections and to

further its substantive goals, as well as ensuring fairness to all of the parties involved in the SEPA process.

A number of the provisions have been enacted into statute through SSB 3006. The legislative history above therefore describes substantive authority and many of these provisions in some detail.

The section emphasizes public disclosure of agency SEPA policies and decisions. Agencies are required to prepare a document which contains their SEPA policies (see 197-11-1110), and may list them by reference if the referenced material is readily available for review. The section does not require agencies to predict all future environmental issues or potential mitigation measures or authorize agencies to adopt policies in conflict with SEPA. While this section intentionally does not specify the level of detail of agency SEPA policies -- leaving this to each agency's discretion -- the section is also intended for agencies to have SEPA policies which are more specific than many agencies now have.

The section requires agencies to state their decisions (subsection 1(b)), including any mitigation and monitoring that will be implemented. Public disclosure and SEPA's substantive policies are furthered by requiring agencies to cite the agency SEPA policy which is the basis of any condition or denial under SEPA (agencies may condition or deny projects under other laws, and this section does not regulate such activities).

This section also establishes standards and criteria for mitigation measures, especially those required of public or private applicants. The requirement for agencies to consider whether other local, state, or federal requirements would mitigate an identified significant impact is included to avoid unintended conflicts or duplication. The section requires consideration of whether such requirements will be enforced because of concern about recent federal reduction in environmental enforcement efforts, leading to concern that a requirement may be on the books but not implemented. This provision is not intended to create paperwork for agencies.

WAC 197-11-740      Optional Coordinated Permit Procedures.

This section puts together various techniques in the rules to allow a coordinated permit review when a proposal would require multiple permits from various agencies with jurisdiction. The provision essentially requires completion of environmental analysis at the conceptual stage by the lead agency and allows specific impacts and mitigation measures to be reviewed in the context of specific agency permits for particular environmental media.

WAC 197-11-750      Appeals.

This section provides rules for the appeals process established by RCW 43.21C.075 and other relevant statutory sections. The appeals process is described at some length in Attachment 1 to the Commission's Memorandum to Agencies and Interim Guidance (page 74 of this report).

In terms of appeals forms, it should be noted that the DNS/DS forms (197-11-1350/1360) contain a way to give notice for appeals (the appeals, on

the DS form, are of the determination to prepare an EIS and not of the scoping process). The form for the "notice of action" (191-11-1380) is substantially as set forth in the act and, as noted in parentheses at the bottom of the form, may be used to give "official notice" (subsection 8 of 197-11-750).

## PART 8 DEFINITIONS

This Part provides a uniform terminology for SEPA.

WAC 197-11-800 explains the usage of common words in the rules.

WAC 197-11-810 through 990 explain the meaning of specific terms in the SEPA process. Most of these terms have already been explained in context in the preceding material in this section by section analysis.

Part 8 helps to simplify a number of SEPA concepts, for example. Actions can be viewed as four types: project, plan, policy, or program (the latter three are grouped as "nonproject" actions). (197-11-815.)

The "scope" of an EIS consists of three items: proposed actions, impacts, and alternatives. Each of these in turn has three elements: (1) single, connected, and similar actions; (2) direct, indirect, and cumulative impacts; and (3) no action alternative, alternative courses of action, and mitigation measures not in the proposal. (197-11-860.)

The rules include a few important definitions which are not in the existing guidelines, and for which the courts have sought guidance. The term "mitigation" was carefully drafted to cover appropriate ways to avoid or reducing impacts (197-11-920). The term "significant" is explained in terms of the context of a proposal and the intensity of its impacts, including a recognition that it may not be susceptible to a neat formula (197-11-970).

Part 8 has been written and cross-referenced to assist the reader to locate important concepts in the rules.

## Part 9 CATEGORICAL EXEMPTIONS

This Part lists the specific categorical exemptions in the rules. WAC 197-11-1000 contains the generally applicable exemptions. WAC 197-11-1010 through 1075 contains the categorical exemptions pertaining to specific agencies. WAC 197-11-1080 covers emergencies, and 197-11-1090 continues the existing guideline (WAC 197-10-150) which allows agencies to petition the Department of Ecology to add or delete exemptions.

Nearly all of the exemptions have been continued from the existing guidelines (WAC 197-10-170 through 180) and do not require discussion in this summary. The main changes have been a more logical organization, the addition of a flexible thresholds provision for minor new construction (197-11-1000(1)), and school closures (197-11-1000(7)), which were otherwise exempted by HB 719).

The minor new construction provision was developed over some several months to limit the number or categories involved (the flexible thresholds apply to 5 out of some 14 types of existing minor new construction exemptions). The amounts were based on quantities which historically resulted in de minimus environmental impact and were consistent with most local land use codes (such as 40 automobiles). The exemption for fill was lowered, not raised, as a result of the Commission's review. Each agency has the option of raising the thresholds in 197-11-1000(1)(b) to the levels specified in 197-11-1000(1)(c) if supported by local conditions. Agencies may raise some or all of these levels in some or all of their jurisdiction. Because these levels will be in agency SEPA procedures, their adoption will be subject to public review. The concern about losing statewide uniformity and certainty as to these exemptions was felt to be offset by the need for greater recognition of flexibility in this area.

A few other minor new exemptions were included in the rules: the installation of impervious underground tanks of 10,000 gallons or less (197-11-1000(2)(g)); the vacation of streets or roads (197-11-1000(2)(h)); the routine release of hatchery fish or the reintroduction of native species into their historical habitat where only minor documented effects on other species will occur (197-11-1035(1)(f)); and a fish/game hydraulic approval where there are no other agencies with jurisdiction, except that proposals involving removal of 50 or more cubic yards of streambed materials or involving realignment of a new channel are not exempt (197-11-1035(1)(c) and 1040(1)(g))(it should be noted that the existing exemption for hydraulic permit approvals for proposals costing \$5000 or less, or for removing \$1000 or more of streambed material, has been dropped from the rules).

#### PART 10 AGENCY COMPLIANCE

This Part contains a variety of provisions pertaining to agency compliance with SEPA.

Roughly ten sections deal with agency SEPA policies and procedures. WAC 197-11-1110, 1120, and 1122 are the key sections on this subject and tell agencies what policies and procedures they must adopt to be consistent with the act and these rules. Each agency is required to have a set of SEPA "policies" (to exercise of substantive authority) and "procedures" (to carry out the environmental review process). WAC 197-11-1170 allows the statewide guidelines to apply in the absence of agency SEPA procedures. Agencies must formally designate their SEPA policies, however, to ensure that the discretionary actions they take are valid and in compliance with SEPA.

Considerable thought was given to whether agency SEPA policies or procedures should themselves require environmental analysis in a checklist or EIS. Agency procedures, including DOE's adoption of any statewide SEPA rules of a procedural nature (for example, the provisions on substantive authority in these rules are procedural in nature and do not contain environmental control standards), provide the methods for considering environmental impacts, unlike air, water, noise, or land use or shoreline regulations, for example, which govern change or use of the environment. Such procedural rules are not amenable to meaningful environmental analysis. Agency SEPA policies may or may not need review. Most of them will be compilations of existing laws or

or policies, rather than the adoption of new standards, and would therefore not require review. Agency SEPA policies which, for example, limited the height of all buildings or controlled actual use of the environment, rather than being methods, techniques, procedures, or considerations, might well require detailed environmental analysis.

Being sensitive to the relationship between SEPA procedures and environmental quality, however, the Commission has sought through this report to analyze and explain many of the considerations and alternatives considered in the development of the SEPA rules (see, for example, the executive summary, preface to the proposed rules, and this section analysis).

Another dozen sections in this Part specify rules for lead agency designation, including continuing the provision for DOE resolution of lead agency disputes (197-11-1260). Subsection 2 contains criteria for DOE to apply, which are intended to be referred to for guidance by agencies in their efforts to resolve lead agency disputes promptly among themselves.

This Part also specifies agencies with environmental expertise (197-11-1190), and contains the severability and effective date clauses for the rules (197-11-1280 and 1290).

#### PART 10 FORMS

This Part contains several forms for use in the SEPA process. The key form is the environmental checklist (197-11-1325), which has been discussed in the executive summary and elsewhere in this report. The other forms have also been written in simpler English and provide for greater accountability, as noted in the introductory materials to this section analysis.

It is intended that the forms be used for as many purposes as possible and be integrated with other agency notices and forms. For example, as noted above, the Notice of Action is suitable to use as an adequate form for giving official notice under 197-11-750(8). The Determination of Significance doubles as the scoping notice (unless an agency uses a comparable form for this purpose).

#### KEY SECTIONS

As may be apparent, the entire organization and content of the rules has been developed as a whole, and changes in one section may affect many others. In general, the most of the provisions reflecting the improvements recommended by the Commission are included in the following sections: 020, 055, 060, 070, 080, 090, 305, 315, 320, 340, 400, 402, 405, 408, 410, 425, 430, 435, 440, 442, 443, 444, 448, 450, 502, 508, 510, 520, 545, 550, 560, 640, 660, 720, 740, 750, Part 8, 1000, 1122, Part 11.