



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Ecology AO#13-01

- | | |
|--|---|
| <input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 13-05-019 ; or | <input type="checkbox"/> Original Notice |
| <input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or | <input type="checkbox"/> Supplemental Notice to WSR _____ |
| <input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1). | <input type="checkbox"/> Continuance of WSR _____ |

Title of rule and other identifying information: (Describe Subject)

The Department of Ecology (Ecology) proposes to adopt amendments to certain portions of State Environmental Policy Act (SEPA), Chapter 197-11 Washington Administrative Code (WAC). This rule provides uniform requirements for compliance with SEPA. Ecology proposes repealing the SEPA Model Ordinance, Chapter 173-806 WAC and providing this information in guidance. Ecology also proposes repealing Public Records, Chapter 197-06 WAC. This rule is out of date and refers to the Council on Environmental Policy that no longer exists. The sections of the rule relating to public records have been superseded by Chapter 173-03 WAC.

Hearing location(s):

Department of Ecology
300 Desmond Drive
Lacey, WA 98503

Call in Number to participate and provide comments by phone: 1-800-704-9804 – Pin number: 8386377#

Date: January 29, 2014 Time: Hearing #1 starts at 1:30 pm and Hearing #2 starts at 6:30 pm - Ecology will have a brief presentation, followed by a question and answer session followed by the formal hearing.

Date of intended adoption: March 12, 2014

(Note: This is NOT the effective date)

Submit written comments to:

Name: Fran Sant
Address: Department of Ecology
300 Desmond Drive
Lacey, WA 98503
360-407-6004
e-mail separulemaking@ecy.wa.gov
fax (360)407-6904 by (date) February 5th, 2014

Assistance or persons with disabilities: Contact:

Shorelands and Environmental Assistance Program
by: January 22, 2014.
(360) 407-6600

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

See Exhibit "A" attached hereto and made a part hereof:

Reasons supporting proposal:

See Exhibit "B" attached hereto and made a part hereof:

Statutory authority for adoption: State Environmental Policy Act RCW 43.21C.110, See Also RCW 43.21C.100 which abolished the council of Environmental Policy as of June 30, 1976.

Statute being implemented: Chapter 43.21C RCW

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
- If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 16, 2013
TIME: 11:36 AM

WSR 14-01-078

DATE
12/15/13

NAME (type or print)
Polly Zehm

SIGNATURE

Deputy Director, Department of Ecology

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

N/A

Name of proponent: (person or organization) Department of Ecology

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Brenden McFarland	Department of Ecology – Lacey, WA	(360) 407-6976
Implementation.... Brenden McFarland	Department of Ecology – Lacey, WA	(360) 407-6976
Enforcement..... N/A		

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.

The proposed amendments meet the criteria of exemption from analysis under RCW 19.85.030 which requires an agency to prepare a small business economic impact state (SBEIS) “if the proposed rule will impose more than minor cost on business or any industry”. The proposed amendments to Ecology’s SEPA rules don’t impose any costs on business. Therefore, a SBEIS is not required for the proposed rule amendments.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Fran Sant

Address: Department of Ecology

PO BOX 47703

Olympia, WA 98504

phone (360)407-6004

fax (360)407-6904

e-mail separulemaking@ecy.wa.gov

No: Please explain:

Exhibit “A”

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Ecology proposes to adopt amendments to **Chapter 197-11 WAC**, State Environmental Policy Act (SEPA). The rule changes include, but are not limited to the following:

- Expanded use of NEPA documentation by lead agencies.
- Update of definition for “lands covered by water”.
- For adoption of increased flexible thresholds for minor new construction, more specific requirements regarding cultural resources and an increase in notice to 60 days.
- Expanded minor new construction exemptions for installation or removal of tanks and solar energy projects.
- New maintenance exemption for smaller dredging projects.
- Update of exemption for land use decisions to provide that most land use decisions will be exempt for otherwise exempt projects, with some limited exceptions.
- New exemption for formation of special districts.
- New exemption for text amendments of ordinances or codes that do not change environmental standards.
- Update of utility exemption for water pipe size to align with industry standards.
- Allow Department of Natural Resource (DNR) Rock sales on state owned land.
- Updated Washington State Department of Transportation (WSDOT) maintenance exemptions.
- Environmental checklist updates.
- Other minor updates, clarifications and technical corrections.

Ecology proposes to repeal **Chapter 173-806 WAC** in response to changes being made in Chapter 197-11 WAC and will make the model ordinance available as guidance rather than rule.

Ecology also proposes to repeal **Chapter 197-06 WAC**. This rule is being repealed because (1) a number of the provisions are specific to the Council on Environmental Policy that was established in the 1970’s and no longer exists; (2) The sections of the rule related to public records have been superseded by Chapter 173-03 WAC.

Exhibit “B”

Reasons supporting proposal:

Section 301 in Chapter 1, Laws of 2012 1st Special Session (2ESSB 6406) directed Ecology to update the SEPA Rules. The 2012 legislature directed Ecology to modernize the SEPA rules in 2013:

- Update, but not decrease, the thresholds for all other projects actions in WAC 197-11-800.
- Create categorical exemptions for minor code amendments that do not lessen environmental protection.
- Propose methods for integrating the SEPA process with provisions of the Growth Management Act.

In addition Ecology was also directed by 2ESSB 6406 to convene an Advisory Committee to assist Ecology in:

- Updating the environmental checklist.
- Ensure that state agencies, other interested parties and federally recognized tribes receive notice about projects under Chapter 43.21C RCW and through other means.

Ecology is also making technical corrections to rule language in order to update and modernize the SEPA rules.

Ecology is repealing Chapter 173-806 WAC and making the SEPA model ordinance available as guidance rather than rule. Ecology will be able to more easily update the guidance in the future.

Ecology is repealing Chapter 197-06 WAC because the rule is out of date and makes reference to the Council on Environmental Policy that no longer exists.