

SEPA Rulemaking 2012

Questions & Answers



What is the purpose of the proposed rule amendment?

Ecology is updating the State Environmental Policy Act rules to improve both the quality and efficiency of environmental review processes. The exemptions and other sections of the rules have not been updated with substantial revision in almost twenty years. Two phases of rules are underway as a result of legislative direction and budget allocation. The 2012 rulemaking phase addresses an increase in thresholds for categorical exemptions (projects that do not require SEPA review). By the end of 2013 a separate rule amendment is planned for completion to address additional exemptions and other needed updates.

The proposed 2012 amendments focus on the following objectives:

- Increase the maximum flexible exemption threshold for minor new construction projects and establish different levels for fully planning GMA jurisdictions.
- Expand the utility project exemption related to electrical lines to accommodate current industry standards.
- Improve the process that local governments follow in adopting flexible SEPA exemption thresholds.
- Add flexibility for all lead agencies to allow for the submittal of electronic documents.
- Add flexibility for lead agencies when completing checklist for nonproject actions.

How has the public been involved in this rulemaking process?

Ecology has convened an advisory group consisting of environmental, cultural resource, agriculture, business, cities, counties, state agencies and tribal representatives to consult on proposed rule amendments. We have also published many notices starting in August of 2012 on our website and through our listserv. We have invited the public to participate in our discussions in person, on the phone and in writing. A tight schedule has been directed by legislation but we've done our very best to involve a broad range of public interests in this first phase of rulemaking.

Would the new exemption thresholds for minor new construction automatically apply throughout the state?

No, the proposed rule only increases the construction project exemptions that are optional for local jurisdictions. They would only apply in cities and counties that choose to adopt ordinances or resolutions with higher levels. These higher levels of exemption thresholds must be supported by findings that existing regulations adequately avoid, minimize or compensate for impacts to all elements of the environment listed in WAC 197-11-444. This adoption process requires public notice and comment on the proposed ordinance plus full disclosure about the how the public notification for project-level permit applications will change when they no longer include SEPA review.

What is considered a “stand alone” excavation or fill project?

Land disturbing activities result in a change in the existing soil cover. This can include the fill/placement and excavation/removal of earth material. This can also include vegetation clearing and the “grading” or finishing of the soil surface. The existing rule language related to minor new construction exemption for excavation and fill projects only applies when these activities are not part of a new building construction project such as a residence or commercial structure. This exemption does apply to clearing and grading activities despite their

potential need for local permits. The proposed rule amendment clarifies the existing language for the excavation and fill projects with the addition of the “stand-alone” qualifier. It also includes a higher flexible maximum quantity threshold to respond to the legislative direction.

How will the public, tribes and other agencies be notified about proposed projects that are exempt from SEPA?

A key component of SEPA review is public involvement in agency-decisions on projects and other proposals. For some types of projects the SEPA public notice requirement is the only way that community members become aware of development activities. If an expansion of the SEPA exemptions is adopted by a specific city or county, this could result in a loss of public notice for these projects. However, there are other public notice and commenting requirements in state and local laws and regulations, such as the Local Project Review Act in RCW 36.70B. These requirements (as adopted by many jurisdictions) could reduce or eliminate the loss of public notice provided by SEPA review.

The proposed rule amendment provides an opportunity for the public, tribes and other agencies to address the potential loss of project-level public notice requirements. All local government proposals for adoption of increased exemption levels would need to identify the project-level public notice that remains despite the SEPA exemption. Additionally, this issue of public notice will be discussed further and additional rule amendments may be proposed in the 2013 SEPA rulemaking process.

How will Cultural and Historic Resources be protected with less environmental review under SEPA?

Cultural and historic resources are highly valued and non-renewable. The protection of cultural and historic resources is not a required component of land-use plans and development regulations under the state’s Growth Management Act. Consequently there are very few regulations that address these impacts. The SEPA process and its authorities are the only opportunity for most agencies to consider and enforce necessary mitigation to avoid or reduce the impacts and protect this element of our community identity.

The proposed rule intends to partially address this concern. The “findings” requirement for increased exemption levels requires cities and counties to demonstrate how potential impacts to cultural resources are “adequately addressed” by existing laws and regulations. The cultural resource professionals involved with the SEPA Rulemaking Advisory Group have drafted some initial guidance for local jurisdictions to apply in their comprehensive plans and development regulations. Ecology can incorporate this information and publish guidance materials during the implementation and outreach of the final rule amendments.

What is a “non-project action” and why is the environmental checklist not useful for identifying adverse impacts for these decisions?

“Nonproject action” is a term used in SEPA to refer to agency decisions on policies, plans, or programs that contain standards controlling use or modification of the environment. Many decisions are made during the development of a nonproject proposal. Consequently effective environmental review occurs at each key decision point forming the proposal.

It can be difficult to associate a rule, policy or plan with on-the-ground activities and their impacts. The tools used in SEPA review must be geared toward this type of analysis. The current SEPA environmental checklist is written to assist private applicants to describe the setting for potential impacts of project-level (building a structure) impacts. Consequently most of the questions related to impacts on specific elements of the environment are not relevant to agencies making programmatic or land-use decisions. The 2012-2013 rulemaking is a new opportunity to remedy these problems by implementing better processes, procedures, and guidance for non-project review. The aim is to enhance the consideration of environmental values, impacts and alternative analysis into the decision making process. As a start in this direction, the rule proposal adds flexibility for the lead agency. The checklist may be shortened for non-projects to exclude the questions in *Part B* (related to specific elements of the environment) that are not useful to the environmental analysis.