

Department of Ecology

SEPA Rule Amendments 2014

Sections with substantive changes excluding the Environmental Checklist¹

WAC 197-11-508 SEPA register. (1) The department of ecology shall prepare a SEPA register ((at least weekly)) that is web-based and updated daily, giving notice of all environmental documents required to be sent to the department of ecology under these rules, specifically:

- (a) DNSs under WAC 197-11-340(2);
- (b) DSs (scoping notices) under WAC 197-11-408;
- (c) EISs under WAC 197-11-455, 197-11-460, 197-11-620, and 197-11-630;
- (d) Notices of action under RCW 43.21C.080 and 43.21C.087; and
- (e) Notices in the optional DNS process under WAC 197-11-355 (2)(d)(i) and (5).

(2) All agencies shall submit the environmental documents listed in subsection (1) of this section to the department promptly and in accordance with procedures established by the department.

(3) Agencies are encouraged to refer to the SEPA register for notice of SEPA documents which may affect them.

(4) The department:

(a) Shall establish the method for distributing the SEPA register, which may include listing on internet, publishing and mailing to interested persons, or any other method deemed appropriate by the department((.));

(b) May establish a reasonable format for the SEPA register;

(c) May charge a reasonable fee for the SEPA register as allowed by law, in at least the amount allowed by chapter 42.17 RCW, from agencies, members of the public, and interested organizations.

(5) Members of the public, citizen and community groups, and educational institutions are encouraged to refer to the SEPA register for notice of SEPA actions which may affect them.

WAC 197-11-510 Public notice. (1) When these rules require notice to be given under this section, the lead agency must use reasonable methods to inform the public and other agencies

¹ A revised and reformatted version of the SEPA Environmental Checklist is at:
<http://www.ecy.wa.gov/programs/sea/sepa/docs/checklistGuidanceLinks.docx>

that an environmental document is being prepared or is available and that public hearing(s), if any, will be held. The agency may use its existing notice procedures.

Examples of reasonable methods to inform the public are:

- (a) Posting the property, for site-specific proposals;
 - (b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;
 - (c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;
 - (d) Notifying the news media;
 - (e) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals;
- ~~((and/or))~~

(f) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals or subject areas); and/or

(g) Mailing or e-mailing notice to any person, group or agency who has requested notice.

(2) Each agency shall specify its method of public notice in its SEPA procedures, WAC 197-11-904 and 197-11-906. If an agency does not specify its method of public notice or does not adopt SEPA procedures, the agency shall use methods (a) and (b) in subsection (1).

(3) Documents which are required to be sent to the department of ecology under these rules will be published in the SEPA register, which will also constitute a form of public notice. However, publication in the SEPA register shall not, in itself, meet compliance with this section.

WAC 197-11-610 Use of NEPA documents. (1) An agency may adopt any environmental analysis prepared under the National Environmental Policy Act (NEPA) by following WAC 197-11-600 and 197-11-630.

(2) A NEPA environmental assessment (EA) or documented categorical exclusion may be adopted to ~~((satisfy requirements for))~~ support a determination of nonsignificance ~~((or EIS))~~ instead of preparing an environmental checklist, if the requirements of WAC 197-11-340, 197-11-600, and 197-11-630 (and WAC 197-11-350 and 197-11-355 as applicable), are met and elements of the environment in WAC 197-11-444 are adequately addressed.

(3) An agency may adopt a NEPA EIS as a substitute for preparing a SEPA EIS if:

(a) The requirements of WAC 197-11-360, 197-11-600, and 197-11-630 are met (in which case the procedures in Parts Three ~~((through))~~, Four, and Five of these rules for preparing an EIS shall not apply); and

(b) The federal EA or EIS is not found inadequate: (i) By a court; (ii) by the council on environmental quality (CEQ) (or is at issue in a predecision referral to CEQ) under the NEPA regula-

tions; or (iii) by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, 42 U.S.C. 1857.

(4) Subsequent use by another agency of a federal EIS, adopted under subsection (3) of this section, for the same (or substantially the same) proposal does not require adoption, unless the criteria in WAC 197-11-600(3) are met.

(5) If the lead agency has not held a public hearing within its jurisdiction to obtain comments on the adequacy of adopting a federal environmental document as a substitute for preparing a SEPA EIS, a public hearing for such comments shall be held if, within thirty days of circulating its statement of adoption, a written request is received from at least fifty persons who reside within the agency's jurisdiction or are adversely affected by the environmental impact of the proposal. The agency shall reconsider its adoption of the federal document in light of public hearing comments. [Statutory Authority: RCW 43.21C.110. WSR 84-05-020 (Order DE 83-39), § 197-11-610, filed 2/10/84, effective 4/4/84.]

WAC 197-11-756 Lands covered by water. (1) "Lands covered by water" means lands underlying the water areas of the state below the ordinary high water mark, including salt waters, tidal waters, estuarine waters, natural water courses, lakes, ponds, artificially impounded waters, ~~((marshes, and swamps))~~ and wetlands. As specified in Part Nine certain categorical exemptions do not apply ((to)) when a portion or all of a project or proposal is undertaken on lands covered by water((, as specified in Part Nine)).

(2) Wetlands - Wetlands are defined as areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway.

(3) "Lands covered by water" does not include adjacent lands and designated buffers above the ordinary high water mark.

[Statutory Authority: RCW 43.21C.110. WSR 84-05-020 (Order DE 83-39), § 197-11-756, filed 2/10/84, effective 4/4/84.]

WAC 197-11-800 Categorical exemptions. The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC 197-11-305.

Note: The statutory exemptions contained in chapter 43.21C RCW are not included in Part Nine. Chapter 43.21C RCW should be reviewed in determining whether a proposed action not listed as categorically exempt in Part Nine is exempt by statute from threshold determination and EIS requirements.

(1) Minor new construction - Flexible thresholds.

(a) The exemptions in this subsection apply to all licenses required to undertake the construction in question (~~(, except when a rezone or any license governing emissions to the air or discharges to water is required)~~). To be exempt under this subsection, the project must be equal to or smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency. The exemptions in this subsection apply except when the project:

(i) Is undertaken wholly or partly on lands covered by water;

(ii) Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383;

(iii) Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800 (7) or (8); or

(iv) Requires a land use decision that is not exempt under WAC 197-11-800(6).

(b) The following types of construction shall be exempt (~~(, except when undertaken wholly or partly on lands covered by water)~~):

(i) The construction or location of four detached single family residential units.

(ii) The construction or location of four multifamily residential units.

(iii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.

(iv) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for twenty automobiles. This exemption includes ~~((stand-alone))~~ parking lots for twenty or fewer automobiles not associated with a structure.

(v) Any ~~((landfill))~~ fill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation ~~((not associated with an exempt project in subsection (b)(i), (ii), (iii), or (iv); and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder))~~ and any excavation, fill or grading necessary for an exempt project in (i), (ii), (iii), or (iv) of this subsection shall be exempt.

(c) Cities, towns or counties may raise the exempt levels up to the maximum specified in (d) of this subsection by implementing ordinance or resolution. Such levels shall be specified in the agency's SEPA procedures (WAC 197-11-904). Separate maximum optional thresholds are established in (d) of this subsection applying to both incorporated areas and unincorporated urban growth areas in fully planning jurisdictions under RCW 36.70A.040; other unincorporated areas in fully planning counties; and jurisdictions in all other counties. Agencies may adopt the maximum level or a level between the minimum and maximum level. An agency may adopt a system of several exempt levels ~~((s)),~~ such as different levels for different geographic areas~~((s)),~~ and mixed use projects.

At a minimum, the following process shall be met in order to raise the exempt levels.

(i) Documentation that the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed for the development exempted. The requirements may be addressed in specific adopted development regulations, and applicable state and federal regulations.

(ii) Description in the findings or other appropriate section of the adopting ordinance or resolution of the locally established ~~((project-level public))~~ notice and comment opportunities ~~((that are provided for proposals))~~ for the public, affected tribes, and agencies regarding permitting of development projects included in these increased exemption levels.

(iii) Before adopting the ordinance or resolution containing the proposed new exemption levels, the ~~((local government))~~ agency shall provide a minimum of ~~((twenty-one))~~ sixty days notice to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, and the public and provide an opportunity for comment.

(iv) The city, town, or county must document how specific adopted development regulations and applicable state and federal laws provide adequate protections for cultural and historic resources when exemption levels are raised. The requirements for notice and opportunity to comment for the public, affected tribes, and agencies in (c)(i) and (ii) of this subsection and the requirements for protection and mitigation in (c)(i) of this subsection must be specifically documented. The local ordinance or resolution shall include, but not be limited to, the following:

• Use of available data and other project review tools regarding known and likely cultural and historic resources, such as inventories and predictive models provided by the Washington department of archaeology and historic preservation, other agencies, and tribal governments.

• Planning and permitting processes that ensure compliance with applicable laws including chapters 27.44, 27.53, 68.50, and 68.60 RCW.

• Local development regulations that include at minimum preproject cultural resource review where warranted, and standard inadvertent discovery language (SIDL) for all projects.

(d) The maximum exemption levels applicable to (c) of this subsection are:

Project types	Fully planning GMA counties		All other counties
	Incorporated and unincorporated UGA	Other unincorporated areas	Incorporated and unincorporated areas
Single family residential	30 units	20 units	20 units
Multifamily residential	60 units	25 units	25 units
Barn, loafing shed, farm equipment storage, produce storage or packing structure	40,000 square feet	40,000 square feet	40,000 square feet
Office, school, commercial, recreational, service, storage building, parking facilities	30,000 square feet and 90 parking spaces	12,000 square feet and 40 parking spaces	12,000 square feet and 40 parking spaces
((Landfill)) Fill or excavation	1,000 cubic yards	1,000 cubic yards	1,000 cubic yards

~~(2) Other minor new construction. ((The following types of construction shall be exempt except where undertaken wholly or in part on lands covered by water (unless specifically exempted in this subsection); the exemptions provided by this section shall apply to all licenses required to undertake the construction in question, except where a rezone or any license governing emissions to the air or discharges to water is required:))~~

(a) The exemptions in this subsection apply to all licenses required to undertake the following types of proposals except when the project:

(i) Is undertaken wholly or partly on lands covered by water;

(ii) Requires a license governing discharges to water that is not exempt under RCW

43.21C.0383;

(iii) Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800 (7) or (8); or

(iv) Requires a land use decision that is not exempt under WAC 197-11-800(6).

(b) The construction or designation of bus stops, loading zones, shelters, access facilities and pull-out lanes for taxicabs, transit and school vehicles.

~~((b))~~ (c) The construction and/or installation of commercial on-premise signs, and public signs and signals.

~~((c))~~ (d) The construction or installation of minor road and street improvements by any agency or private party that include the following:

(i) Safety structures and equipment: Such as pavement marking, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators~~((i))~~;

(ii) Transportation corridor landscaping (including the application of state of Washington ~~((state department of agriculture))~~ approved herbicides by licensed personnel for right of way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality in accordance with WAC 248-54-660)~~((ii))~~;

(iii) Temporary traffic controls and detours~~((iii))~~;

(iv) Correction of substandard curves and intersections within existing rights of way, widening of a highway by less than a single lane width where capacity is not significantly increased and no new right of way is required~~((iv))~~;

(v) Adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right of way is required~~((v))~~;

(vi) Channelization and elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation~~((vi))~~;

(vii) Installation of catch basins and culverts~~((, and))~~ for the purposes of road and street improvements;

(viii) Reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders~~((,))~~ where capacity is not increased and no new right of way is required;

(ix) Addition of bicycle lanes, paths and facilities, and pedestrian walks and paths, but not including additional automobile lanes.

~~((d))~~ (e) Grading, excavating, filling, septic tank installations, and landscaping necessary for any building or facility exempted by subsections (1) and (2) of this section, as well as fencing and the construction of small structures and minor facilities accessory thereto.

~~((e))~~ (f) Additions or modifications to or replacement of any building or facility exempted by subsections (1) and (2) of this section when such addition, modification or replacement will not change the character of the building or facility in a way that would remove it from an exempt class.

~~((f))~~ (g) The demolition of any structure or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for structures or facilities with recognized historical significance such as listing in a historic register.

~~((g))~~ (h) The installation or removal of impervious underground or above-ground tanks, having a total capacity of 10,000 gallons or less except on agricultural and industrial lands. On agricultural and industrial lands, the installation or removal of impervious underground or above-ground tanks, having a total capacity of 60,000 gallons or less.

~~((h))~~ (i) The vacation of streets or roads.

~~((i))~~ (j) The installation of hydrological measuring devices, regardless of whether or not on lands covered by water.

~~((j))~~ (k) The installation of any property, boundary or survey marker, other than fences, regardless of whether or not on lands covered by water.

(l) The installation of accessory solar energy generation equipment on or attached to existing structures and facilities whereby the existing footprint and size of the building is not increased.

(3) **Repair, remodeling and maintenance activities.** The following activities shall be categorically exempt: The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, recreation, and transportation facilities involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks). The following maintenance activities shall not be considered exempt under this subsection:

(a) Dredging of over fifty cubic yards of material;

(b) Reconstruction~~((f))~~ or maintenance of groins and similar shoreline protection structures;

~~((e))~~

(c) Replacement of utility cables that must be buried under the surface of the bedlands~~((-))~~;

or

(d) Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection.

(4) **Water rights.** Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of groundwater, for any purpose. The exemption covering not only

the permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pumphouse reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation.

(5) **Purchase or sale of real property.** The following real property transactions by an agency shall be exempt:

(a) The purchase or acquisition of any right to real property.

(b) The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to ~~((an))~~ a specifically designated and authorized public use established by the public landowner and used by the public for that purpose.

(c) ~~((The lease of real property when))~~ Leasing, granting an easement for, or otherwise authorizing the use of ((the)) real property ((for the term of the lease)) when the property use will remain essentially the same as the existing use for the term of the agreement, or when the use under the lease, easement or other authorization is otherwise exempted by this chapter.

(6) ~~((Minor))~~ **Land use decisions.** The following land use decisions shall be exempt:

(a) Land use decisions for exempt projects, except that rezones must comply with (c) of this subsection.

(b) Other land use decisions not qualified for exemption under subsection (a) (such as a home occupation or change of use) are exempt provided:

(i) The authorized activities will be conducted within an existing building or facility qualifying for exemption under WAC 197-11-800 (1) and (2); and

(ii) The activities will not change the character of the building or facility in a way that would remove it from an exempt class.

(c) Where an exempt project requires a rezone, the rezone is exempt only if:

(i) The project is in an urban growth area in a city or county planning under RCW 36.70A.040;

(ii) The proposed rezone is consistent with and does not require an amendment to the comprehensive plan; and

(iii) The applicable comprehensive plan was previously subjected to environmental review and analysis through an EIS under the requirements of this chapter prior to adoption; and the EIS adequately addressed the environmental impacts of the rezone.

(d) Except upon lands covered by water, the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060, ~~((but not including further))~~ and short plats or short subdivisions ~~((or short platting within a plat or subdivision previously exempted under this subsection.~~

~~(b) Granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density.~~

~~(c) Classifications of land for current use taxation under chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW)) within the original short subdivision boundaries provided the cumulative divisions do not exceed the total lots allowed to be created under RCW 58.17.020. This exemption includes binding site plans authorized by RCW 58.17.035 up to the same number of lots allowed by the jurisdiction as a short subdivision.~~

(e) Granting of variance based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density.

(f) Alteration of property lines as authorized by RCW 58.17.040(6).

(7) **Open burning.** Opening burning and the issuance of any license for open burning shall be exempt. The adoption of plans, programs, objectives or regulations by any agency incorporating general standards respecting open burning shall not be exempt.

(8) **Clean Air Act.** The granting of variances under RCW 70.94.181 extending applicable air pollution control requirements for one year or less shall be exempt.

(9) **Water quality certifications.** The granting or denial of water quality certifications under the Federal Clean Water Act (Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1341) shall be exempt.

(10) **Activities of the state legislature.** All actions of the state legislature are exempted. ~~((This subsection does not exempt the proposing of legislation by an agency (WAC 197-11-704).))~~

(11) **Judicial activity.** The following shall be exempt:

(a) All adjudicatory actions of the judicial branch.

(b) Any quasi-judicial action of any agency if such action consists of the review of a prior administrative or legislative decision. Decisions resulting from contested cases or other hearing processes conducted prior to the first decision on a proposal or upon any application for a rezone, conditional use permit or other similar permit not otherwise exempted by this chapter, are not exempted by this subsection.

(12) **Enforcement and inspections.** The following enforcement and inspection activities shall be exempt:

(a) All actions, including administrative orders and penalties, undertaken to enforce a statute, regulation, ordinance, resolution or prior decision. No license shall be considered exempt by virtue of this subsection; nor shall the adoption of any ordinance, regulation or resolution be considered exempt by virtue of this subsection.

(b) All inspections conducted by an agency of either private or public property for any purpose.

(c) All activities of fire departments and law enforcement agencies except physical construction activity.

(d) Any action undertaken by an agency to abate a nuisance or to abate, remove or otherwise cure any hazard to public health or safety. The application of pesticides and chemicals is not exempted by this subsection but may be exempted elsewhere in these guidelines. No license or adoption of any ordinance, regulation or resolution shall be considered exempt by virtue of this subsection.

(e) Any suspension or revocation of a license for any purpose.

(13) **Business and other regulatory licenses.** The following business and other regulatory licenses are exempt:

(a) All licenses to undertake an occupation, trade or profession.

(b) All licenses required under electrical, fire, plumbing, heating, mechanical, and safety codes and regulations, but not including building permits.

(c) All licenses to operate or engage in amusement devices and rides and entertainment activities((;)) including, but not limited to, cabarets, carnivals, circuses and other traveling shows, dances, music machines, golf courses, and theaters, including approval of the use of public facilities for temporary civic celebrations, but not including licenses or permits required for permanent construction of any of the above.

(d) All licenses to operate or engage in charitable or retail sales and service activities((;)) including, but not limited to, peddlers, solicitors, second hand shops, pawnbrokers, vehicle and housing rental agencies, tobacco sellers, close out and special sales, fireworks, massage parlors, public garages and parking lots, and used automobile dealers.

(e) All licenses for private security services((;)) including, but not limited to, detective agencies, merchant and/or residential patrol agencies, burglar and/or fire alarm dealers, guard dogs, locksmiths, and bail bond services.

(f) All licenses for vehicles for-hire and other vehicle related activities including, but not limited to, taxicabs, ambulances, and tow trucks: Provided, That regulation of common carriers by the utilities and transportation commission shall not be considered exempt under this subsection.

(g) All licenses for food or drink services, sales, and distribution((;)) including, but not limited to, restaurants, liquor, and meat.

(h) All animal control licenses((;)) including, but not limited to, pets, kennels, and pet shops. Establishment or construction of such a facility shall not be considered exempt by this subsection.

(i) The renewal or reissuance of a license regulating any present activity or structure so long as no material changes are involved.

(14) **Activities of agencies.** The following administrative, fiscal and personnel activities of agencies shall be exempt:

(a) The procurement and distribution of general supplies, equipment and services authorized or necessitated by previously approved functions or programs.

(b) The assessment and collection of taxes.

(c) The adoption of all budgets and agency requests for appropriation: Provided, That if such adoption includes a final agency decision to undertake a major action, that portion of the budget is not exempted by this subsection.

(d) The borrowing of funds, issuance of bonds, or applying for a grant and related financing agreements and approvals.

(e) The review and payment of vouchers and claims.

(f) The establishment and collection of liens and service billings.

(g) All personnel actions, including hiring, terminations, appointments, promotions, allocations of positions, and expansions or reductions in force.

(h) All agency organization, reorganization, internal operational planning or coordination of plans or functions.

(i) Adoptions or approvals of utility, transportation and solid waste disposal rates.

(j) The activities of school districts pursuant to desegregation plans or programs; however, construction of real property transactions or the adoption of any policy, plan or program for such construction of real property transaction shall not be considered exempt under this subsection.

(k) Classification of land for current use taxation under chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW.

(15) **Financial assistance grants.** The approval of grants or loans by one agency to another shall be exempt, although an agency may at its option require compliance with SEPA prior to making a grant or loan for design or construction of a project. This exemption includes agencies taking nonproject actions that are necessary to apply for federal or other financial assistance.

(16) **Local improvement districts and special purpose districts.** The formation of local improvement districts and special purpose districts, unless such formation constitutes a final agency decision to undertake construction of a structure or facility not exempted under WAC 197-11-800 and 197-11-880. A special district or special purpose district is a local government entity designated by the Revised Code of Washington (RCW) and is not a city, town, township, or county.

(17) **Information collection and research.** Basic data collection, research, resource evaluation, requests for proposals (RFPs), and the conceptual planning of proposals shall be exempt.

These may be strictly for information-gathering, or as part of a study leading to a proposal that has not yet been approved, adopted or funded; this exemption does not include any agency action that commits the agency to proceed with such a proposal. (Also see WAC 197-11-070.)

(18) **Acceptance of filings.** The acceptance by an agency of any document or thing required or authorized by law to be filed with the agency and for which the agency has no discretionary power to refuse acceptance shall be exempt. No license shall be considered exempt by virtue of this subsection.

(19) **Procedural actions.** The proposal, amendment or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program shall be exempt if they are:

(a) Relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment ((shall be exempt)).

(b) Text amendments resulting in no substantive changes respecting use or modification of the environment.

(c) Agency SEPA procedures ((shall be exempt)).

(20) (~~**Building codes.** The adoption by ordinance of all codes as required by the state Building Code Act (chapter 19.27 RCW-))~~ **Reserved.**

(21) **Adoption of noise ordinances.** The adoption by counties/cities of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from regulations adopted by the department of ecology under chapter 70.107 RCW. When a county/city proposes a noise resolution, ordinance, rule or regulation, a portion of which differs from the applicable state regulations (~~((and thus requires approval of the department of ecology under RCW 70.107.060(4))))~~), SEPA compliance may be limited to those items which differ from state regulations.

(22) **Review and comment actions.** Any activity where one agency reviews or comments upon the actions of another agency or another department within an agency shall be exempt.

(23) **Utilities.** The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration that does not change the action from an exempt class.

(a) All communications lines, including cable TV, but not including communication towers or relay stations.

(b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines (~~(eight))~~ twelve inches or less in diameter.

(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; the overbuilding of existing distribution lines (55,000

volts or less) with transmission lines (up to and including 115,000 volts); within existing rights of way or developed utility corridors, all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 115,000 volts or less; and the undergrounding of all electric facilities, lines, equipment or appurtenances.

(d) All natural gas distribution (as opposed to transmission) lines and necessary appurtenant facilities and hookups.

(e) All developments within the confines of any existing electric substation, reservoir, pump station vault, pipe, or well: (~~Provided, That~~) Additional appropriations of water are not exempted by this subsection.

(f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: Provided, (~~That~~) the chemicals used are approved by (~~the~~) Washington state (~~department of agriculture~~) and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.

(g) All grants of rights of way by agencies to utilities for use for distribution (as opposed to transmission) purposes.

(h) All grants of franchises by agencies to utilities.

(i) All disposals of rights of way by utilities.

(24) **Natural resources management.** In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:

(a) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land that has been subject to a grazing lease within the previous ten years.

(b) Licenses or approvals to remove firewood.

(c) Issuance of agricultural leases covering one hundred sixty contiguous acres or less.

(d) Issuance of leases for Christmas tree harvesting or brush picking.

(e) Issuance of leases for school sites.

(f) Issuance of leases for, and placement of, mooring buoys designed to serve pleasure craft.

(g) Development of recreational sites not specifically designed for all-terrain vehicles and not including more than twelve campsites.

(h) Periodic use of chemical or mechanical means to maintain public park and recreational land: Provided, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality in accordance with WAC 248-54-660.

(i) Issuance of rights of way, easements and use permits to use existing roads in nonresidential areas.

(j) Establishment of natural area preserves to be used for scientific research and education and for the protection of rare flora and fauna, under the procedures of chapter 79.70 RCW.

(25) ((Personal)) Wireless service facilities.

(a) The siting of ((personal)) wireless service facilities are exempt if ((the facility)):

(i) ~~((Is a microcell and is to be attached to an existing structure that is not a residence or school and does not contain a residence or a school;~~

~~((ii) Includes personal wireless service antennas, other than a microcell, and is to be attached to an existing structure (that may be an existing tower) that is not a residence or school and does not contain a residence or school, and the existing structure to which it is to be attached is located in a commercial, industrial, manufacturing, forest, or agriculture zone; or~~

~~((iii)) The collocation of new equipment, removal of equipment, or replacement of existing equipment on existing or replacement structures that does not substantially change the physical dimensions of such structures; or~~

~~((ii) The siting project involves constructing a ((personal)) wireless service tower less than sixty feet in height that is located in a commercial, industrial, manufacturing, forest, or agricultural zone.~~

(b) For the purposes of this subsection:

(i) "((Personal)) Wireless services" means wireless data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(ii) "((Personal)) Wireless service facilities" means facilities for the provision of ((personal)) wireless services.

~~((iii) ("Microcell" means a wireless communication facility consisting of an antenna that is either:~~

~~(A) Four feet in height and with an area of not more than five hundred eighty square inches; or~~

~~(B) If a tubular antenna, no more than four inches in diameter and no more than six feet in length)) Collocation" means the mounting or installation of equipment on an existing tower, building, structure for the purposes of either transmitting or receiving, or both, radio frequency signals for communication purposes.~~

~~((iv) Existing structure" means any existing tower, pole, building, or other structure capable of supporting wireless service facilities.~~

(v) "Substantially change the physical dimensions" means:

(A) The mounting of equipment on a structure that would increase the height of the structure by more than ten percent, or twenty feet, whichever is greater; or

(B) The mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater.

(c) This exemption does not apply to projects within a critical area designated under GMA (RCW 36.70A.060).

(26) The following Washington department of transportation projects and activities shall be exempt: The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, **bridge**, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation, as long as the action:

(a) Occurs within the existing right of way and in a manner that substantially conforms to the preexisting design, function, and location as the original except to meet current engineering standards or environmental permit requirements; and

(b) The action does not result in addition of automobile lanes, a change in capacity, or a change in functional use of the facility.

WAC 197-11-820 Department of licensing. All licenses (~~((required under programs administered by the department of licensing as of December 12, 1975))~~) issued by the department of licensing are exempted, except the following:

(1) Camping club promotional permits under chapter 19.105 RCW.

(2) Motor vehicle wrecker licenses under chapter 46.80 RCW; WAC 197-11-800 (13)(i) shall apply to allow possible exemption of renewals of camping club promotional permits and motor vehicle wrecker licenses.

WAC 197-11-825 Department of labor and industries. All licenses (~~((required under programs administered by the department of labor and industries as of December 12, 1975))~~) issued by the department of labor and industries are exempted, except the issuance of any license for the manufacture of explosives or the adoption or amendment by the department of any regulations incorporating general standards respecting the issuance of licenses authorizing the storage of explosives under chapter 70.74 RCW. The adoption of any industrial health or safety regulations containing noise standards shall be considered a major action under this chapter.

[Statutory Authority: RCW 43.21C.110. WSR 84-05-020 (Order DE 83-39), § 197-11-825, filed 2/10/84, effective 4/4/84.]

WAC 197-11-830 Department of natural resources. The following actions and licenses of the department of natural resources are exempted:

(1) Forest closures, shutdowns and permit suspensions due to extreme unusual fire hazards.

(2) Operating permits to use power equipment on forest land.

(3) Permits to use fuse on forest land.

(4) Log patrol licenses.

(5) Permits for drilling for which no public hearing is required under RCW 79.76.070 (geothermal test drilling).

(6) Permits for the dumping of forest debris and wood waste in forested areas.

(7) Those sales of timber from public lands that the department of natural resources determines, by rules adopted pursuant to RCW 43.21C.120 do not have potential for a substantial impact on the environment.

(8) Except on aquatic lands under state control, leases for mineral prospecting under RCW 79.01.616 or 79.01.652, but not including issuance of subsequent contracts for mining.

(9) Sales of rock from public lands involving rock pits less than three acres in size that are used for activities regulated under a forest practices application that is exempt under RCW 43.21C.037.

WAC 197-11-835 Department of ((fisheries)) fish and wildlife. The following activities of the department of ((fisheries)) fish and wildlife are exempted:

(1) The establishment of seasons, catch limits or geographical areas for fishing or shellfish removal.

~~(2) ((All hydraulic project approvals (RCW 75.20.100) for activities incidental to a Class I, II, III forest practice as defined in RCW 76.09.050 or regulations thereunder.~~

~~(3))~~ Hydraulic project approvals where there is no other agency with jurisdiction (besides the department of ((game)) fish and wildlife) requiring a nonexempt permit, except for proposals involving removal of fifty or more cubic yards of streambed materials or involving realignment into a new channel. For purposes of this paragraph, the term new channel shall not include existing channels which have been naturally abandoned within the twelve months previous to the hydraulic permit application.

~~((4))~~ (3) All clam farm licenses and oyster farm licenses, except where cultural practices include structures occupying the water column or where a hatchery or other physical facility is proposed for construction on adjoining uplands.

~~((5))~~ (4) All other licenses (other than those excepted in (2) and (3) above) authorized to be issued by the department as of December 12, 1975 except the following:

(a) Fish farming license, or other licenses allowing the cultivation of aquatic animals for commercial purposes;

(b) Licenses for the mechanical and/or hydraulic removal of clams, including geoducks; and~~((7))~~

(c) Any license authorizing the discharge of explosives in water. WAC 197-11-800 (13)(i) shall apply to allow possible exemption of renewals of the above licenses.

~~((6))~~ (5) The routine release of hatchery fish or the reintroduction of endemic or native species into their historical habitat where only minor documented effects on other species will occur.

(6) The establishment of hunting, trapping or fishing seasons, bag or catch limits, and geographical areas where such activities are permitted.

(7) The issuance of falconry permits.

(8) The issuance of all hunting or fishing licenses, permits, or tags.

(9) Artificial wildlife feeding.

(10) The issuance of scientific collector permits.

(11) Minor repair work to be done by hand tools. Examples include:

(a) Maintenance of fish screen or intake structures; or

(b) Silt and debris removal from boat launches, docks, and piers.

(12) Collection of fish and wildlife for research.

WAC 197-11-845 Department of social and health services and department of health.

All department of social and health services and department of health actions (~~(under programs administered by the department of social and health services as of December 12, 1975,))~~ are exempted, except the following:

(1) The adoption or amendment by the department of any regulations incorporating general standards for issuance of licenses authorizing the possession, use and transfer of radioactive source material under RCW 70.98.080, except that the issuance, revocation or suspension of individual licenses thereto shall be exempt. However, licenses to operate low level burial facilities or licenses to operate or expand beyond design capacity, mineral processing facilities or their tailings

areas whose products or byproducts have concentrations of naturally occurring radioactive materials in excess of exempt concentrations, as specified in WAC 402-20-250, shall not be exempt.

(2) The approval of a comprehensive plan for public water supply systems servicing one thousand or more units under WAC 248-54-065.

(3) The approval of engineering reports or plans and specifications under WAC 248-54-085 and 248-54-095, for all surface water source development, all water system storage facilities greater than one-half million gallons, new transmission lines longer than one thousand feet located in new rights of way and major extensions to existing water distribution systems.

(4) The approval of an application for a certificate of need under RCW 70.38.120 for construction of a new hospital or medical facility or for major additions to existing service capacity of such institutions.

(5) The approval of an application for any system of sewerage and/or water general plan or amendments under RCW 36.94.100.

(6) The approval of any plans and specifications for new sewage treatment works or major extensions to existing sewer treatment works submitted to the department under WAC 248-92-040.

(7) The construction of any building, facility or other installation not exempt by WAC 197-11-800 for the purpose of housing department personnel, or fulfilling statutorily directed or authorized functions ((e.g.) for example, prisons).

(8) The approval of any final plans for construction of a nursing home pursuant to WAC 248-14-100, construction of a private psychiatric hospital pursuant to WAC 248-22-005 or construction of an alcoholism treatment center pursuant to WAC 248-22-510.

WAC 197-11-850 Department of agriculture. All department of agriculture actions ((~~under programs administered by the department of agriculture as of December 12, 1975~~)) are exempted, except for the following:

(1) The approval of any application for a commercial registered feedlot, quarantined registered feedlot under chapter 16.36 RCW, or chapters 16-28 and 16-30 WAC.

(2) The issuance or amendment of any regulation respecting restricted-use pesticides under chapter 15.58 RCW that would have the effect of allowing the use of a pesticide previously prohibited by Washington state.

(3) The removal of any pesticide from the list of restricted-use pesticides established in WAC 16-228-155 so as to permit sale of such pesticides to home and garden users, unless the pesticide is no longer manufactured and is not available.

(4) The removal of any pesticide from the list of highly toxic and restricted-use pesticides established under WAC 16-228-165 so as to authorize sale of such pesticides to persons not hold-

ing an annual user permit, an applicator certificate, or an applicator operator license, unless the pesticide is no longer manufactured and is not available.

(5) The removal of any pesticide from the category of highly toxic pesticide formulations established in WAC 16-228-165 so as to permit the sale of such pesticides by persons not possessing a pesticide dealer's license, unless the pesticide is no longer manufactured and is not available.

(6) The approval of any use of the pesticide DDT or DDD except for those uses approved by the centers for disease control of the United States Department of Health and Human Services (such as control of rabid bats).

(7) The issuance of a license to operate a public livestock market under RCW 16.65.030.

(8) The provisions of WAC 197-11-800 (13)(i) shall apply to allow possible exemption of renewals of the licenses in (1) through (7) above.

WAC 197-11-860 Department of transportation. The following activities of the department of transportation shall be exempt:

(1) Approval of the annual highway safety work program involving the highway-related safety standards pursuant to 23 U.S.C. 402;

(2) Issuance of road approach permits and right of way rental agreements;

(3) Establishment and changing of speed limits of 55 miles per hour or less;

(4) Revisions of existing access control involving a single property owner;

(5) Issuance of a "motorist information signing permit," granting a private business person the privilege of having a sign on highway right of way which informs the public of the availability of his or her services;

(6) Issuance of permits for special units relative to state highways;

(7) Issuance of permits for the movement of over-legal size and weight vehicles on state highways;

(8) Issuance of encroachment permits for road approaches, fences and landfills on highway right of way; ~~(and)~~

(9) Issuance of permits for utility occupancy of highway rights of way for use for distribution (as opposed to transmission).

WAC 197-11-865 Utilities and transportation commission. All utilities and transportation commission actions ~~((of the utilities and transportation commission under statutes administered as of December 12, 1975,))~~ are exempted, except the following:

(1) Issuance of common carrier motor freight authority under chapter 81.80 RCW that would authorize a new service, or extend an existing transportation service in the fields of petrole-

um and petroleum products in bulk in tank type vehicles, radioactive substances, explosives, or corrosives;

(2) Authorization of the openings or closing of any highway/railroad grade crossing, or the direction of physical connection of the line of one railroad with that of another;

(3) Regulation of oil and gas pipelines under chapter 81.88 RCW; and

(4) The approval of utility and transportation rates where the funds realized as a result of such approved rates will or are intended to finance construction of a project, approval of which would not be otherwise exempt under WAC 197-11-800, and where at the time of such rate approval no responsible official of any state or federal agency has conducted the environmental analysis prescribed by this chapter or the appropriate provisions of NEPA, whichever is applicable.

WAC 197-11-870 Department of commerce ((and economic development)). The following activities of the department of commerce ((and economic development)) shall be exempt:

(1) The provisions of business consulting and advisory services that include tourist promotion under RCW 43.31.050.

(2) The promotion and development of foreign trade under RCW 43.31.370.

(3) The furnishing of technical and information services under RCW 43.31.060.

(4) The provision of technical assistance to applicants for loans and aid and/or grants by the community of economic revitalization board under chapter 43.160 RCW.

(5) The conduct of research and economic analysis under RCW 43.31.070, including the provision of consulting and advisory services and recommendations to state and local officials, agencies and governmental bodies as authorized under RCW 43.31.160, 43.31.200 and 43.31.210.

WAC 197-11-875 Other agencies. Except for building construction (the majority of which is undertaken through the department of ((general administration)) enterprise services), all activities of the following state agencies ((under programs they administer as of December 12, 1975,)) are exempted:

(1) Office of the attorney general.

(2) Office of the auditor.

(3) Department of employment security.

(4) Office of the insurance commissioner ((and state fire marshal)).

(5) Department of ((personnel)) enterprise services.

(6) ((Department of printing.)) Office of financial management.

(7) Department of revenue.

(8) Office of the secretary of state.

- (9) Office of the treasurer.
- (10) Arts commission.
- (11) Washington state patrol.
- (12) (~~(Interagency committee for outdoor recreation.)~~) Recreation and conservation office.
- (13) (~~(Department of emergency services.)~~) Emergency management division.
- (14) Department of (~~(general administration, division of banking and division of savings and loan associations.~~
- ~~(15) Forest practices appeals board))~~ financial institutions.
- ~~((16))~~ (15) Public employees' retirement system.
- ~~((17))~~ (16) Law enforcement officers' and firefighters' retirement board.
- ~~((18))~~ (17) Board for volunteer (~~(fireman's retirement system board)~~) firefighters and reserve officers.
- ~~((19))~~ (18) State department of retirement systems.
- ~~((20) Teachers' retirement system board.~~
- ~~(21) Higher education personnel board.~~
- ~~(22) Commission for vocational education.~~
- ~~(23) State energy office.)~~
- (19) Pollution control hearings board.

WAC 197-11-920 Agencies with environmental expertise. The following agencies shall be regarded as possessing special expertise relating to those categories of the environment under which they are listed:

- (1) Air quality.
 - (a) Department of ecology.
 - (b) Department of natural resources (only for burning in forest areas).
 - (c) Department of (~~(social and)~~) health (~~(services)~~).
 - (d) Regional air pollution control authority or agency.
- (2) Water resources and water quality.
 - (a) Department of (~~(game)~~) fish and wildlife.
 - (b) Department of ecology.
 - (c) Department of natural resources (state-owned tidelands, shorelands, harbor areas or beds of navigable waters).
 - (d) Department of (~~(social and)~~) health (~~(services)~~) (public water supplies, sewer systems, shellfish habitats).
 - ~~((e) Department of fisheries.)~~

- (3) Hazardous and toxic substances (including radiation).
- (a) Department of ecology.
 - (b) Department of ~~((social and))~~ health ~~((services))~~.
 - (c) Department of agriculture (foods or pesticides).
 - (d) Department of ~~((fisheries))~~ fish and wildlife (introduction into waters).
 - ~~((e) Department of game (introduction into waters-.))~~
- (4) Solid and hazardous waste.
- (a) Department of ecology.
 - (b) Department of ~~((fisheries))~~ fish and wildlife (dredge spoils).
 - (c) Department of ~~((social and))~~ health ~~((services))~~.
 - ~~((d) Department of game (dredge spoils-.))~~
- (5) Fish and wildlife.
- ~~((a))~~ Department of ~~((game))~~ fish and wildlife.
 - ~~((b) Department of fisheries-.))~~
- (6) Natural resources development.
- (a) ~~((Department of commerce and economic development-.))~~
 - ~~((b))~~ Department of ecology.
 - ~~((c))~~ (b) Department of natural resources.
 - ~~((d))~~ (c) Department of ~~((fisheries))~~ fish and wildlife.
 - ~~((e) Department of game-.))~~
- (7) Energy production, transmission and consumption.
- (a) Department of ecology.
 - (b) Department of natural resources (geothermal, coal, uranium).
 - (c) ~~((State energy office-.))~~ Department of commerce.
 - (d) Energy facility site evaluation council.
 - (e) Utilities and transportation commission.
- (8) Land use and management.
- (a) Department of commerce ~~((and economic development))~~.
 - (b) Department of ecology.
 - (c) Department of ~~((fisheries))~~ fish and wildlife (affecting surface or marine waters).
 - (d) Department of natural resources (tidelands, shorelands, or state-owned or managed lands).
 - ~~((e) Planning and community affairs agency-.))~~
 - ~~((f) Department of game-.))~~
- (9) Noise.

- (a) Department of ecology.
- (b) Department of ~~((social and))~~ health ~~((services))~~.
- (10) Recreation.
 - (a) Department of commerce ~~((and economic development))~~.
 - (b) Department of ~~((game))~~ fish and wildlife.
 - (c) ~~((Department of fisheries.~~
 - ~~((d)))~~ Parks and recreation commission.
 - ~~((e)))~~ (d) Department of natural resources.
- (11) Archaeological/historical.
 - ~~((a-Office))~~ Department of archaeology and historic preservation.
 - ~~((b-Washington State University at Pullman (Washington archaeological research center).))~~
- (12) Transportation.
 - (a) Department of transportation.
 - (b) Utilities and transportation commission.

WAC 197-11-936 Lead agency for private projects requiring licenses from more than one state agency. (1) For private projects which require licenses from more than one state agency, but require no license from a ~~((county/city))~~ local agency, the lead agency shall be one of the state agencies requiring a license, based upon the following order of priority:

- (a) Department of ecology.
- (b) Department of ~~((social and))~~ health ~~((services))~~.
- (c) Department of natural resources.
- (d) Department of ~~((fisheries))~~ fish and wildlife.
- (e) ~~((Department of game.~~
- ~~((f)))~~ Utilities and transportation commission.
- ~~((g)))~~ (f) Department of ~~((motor vehicles))~~ licensing.
- ~~((h)))~~ (g) Department of labor and industries.

(2) When none of the state agencies requiring a license is on the above list, the lead agency shall be the licensing agency that has the largest biennial appropriation.

(3) When, under subsection (1), an agency would be the lead agency solely because of its involvement in a program jointly administered with another agency, the other agency shall be designated the lead agency for proposals for which it is primarily responsible under agreements previously made between the two agencies for joint operation of the program.