

Chapter 220-100 WAC

STATE ENVIRONMENTAL POLICY ACT RULES

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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| 220-100-090 | Department responsibilities when a consulted agency. [Order 76-40, § 220-100-090, filed 5/25/76.] Repealed by 84-19-053 (Order 84-144), filed 9/18/84. Statutory Authority: RCW 75.08.080. |
| 220-100-100 | Filing of agency action—Publication—Form—Time limitation for commencing challenge to action. [Order 76-40, § 220-100-100, filed 5/25/76.] Repealed by 78-05-029 (Order 78-17), filed 4/17/78. Statutory Authority: RCW 75.08.080. |
| 220-100-120 | Use of final declaration of nonsignificance for hydraulic project approvals. [Statutory Authority: RCW 75.08.080, 78-05-029 (Order 78-17), § 220-100-120, filed 4/17/78.] Repealed by 84-19-053 (Order 84-144), filed 9/18/84. Statutory Authority: RCW 75.08.080. |

WAC 220-100-010 Definitions. (1) The definitions of the words and terms of WAC 197-11-700 through 197-11-730 and WAC 197-11-734 through 197-11-799 are made a part of this chapter.

(2) "Environmental document" means any written public document prepared under chapter 197-11 WAC, including department comment letters addressing a SEPA threshold determination or an environmental impact statement (EIS), or supplemental EIS (SEIS).

(3) "Department" means the Washington department of fish and wildlife unless otherwise indicated.

[Statutory Authority: RCW 77.12.047, 03-10-038 (Order 03-83), § 220-100-010, filed 4/30/03, effective 5/31/03. Statutory Authority: RCW 75.08.080, 84-19-053 (Order 84-144), § 220-100-010, filed 9/18/84; Order 76-40, § 220-100-010, filed 5/25/76.]

WAC 220-100-020 Impact of SEPA on the department. The department fully endorses the intent and purpose of SEPA and will make every effort to implement and fulfill

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the intent and requirements of SEPA and the SEPA rules. The department will make every effort to implement SEPA in the best manner possible with the resources available.

[Statutory Authority: RCW 77.12.047, 03-10-038 (Order 03-83), § 220-100-020, filed 4/30/03, effective 5/31/03. Statutory Authority: RCW 75.08.080, 84-19-053 (Order 84-144), § 220-100-020, filed 9/18/84; 78-05-029 (Order 78-17), § 220-100-020, filed 4/17/78; Order 76-40, § 220-100-020, filed 5/25/76.]

WAC 220-100-027 Critical areas. During threshold determination and in determining whether a proposal is exempt from SEPA, the department shall give due consideration to a local government's critical area categorical exemption designations made by local governments under WAC 197-11-908.

[Statutory Authority: RCW 77.12.047, 03-10-038 (Order 03-83), § 220-100-027, filed 4/30/03, effective 5/31/03.]

WAC 220-100-030 Purpose. (1) The purpose of this chapter is to implement chapter 197-11 WAC, SEPA rules, as applicable to the department.

(2) These policies and procedures are developed to implement SEPA in a manner which reduces duplication, establishes effective and uniform rules, encourages public involvement, and promotes certainty with respect to the requirements of the act.

(3) These policies and procedures are not intended to cover compliance by the department with respect to the National Environmental Policy Act of 1969 (NEPA). In those situations where the department is required by federal law or regulations to perform some element of compliance with NEPA, compliance will be governed by the applicable federal statute and regulations.

[Statutory Authority: RCW 77.12.047, 03-10-038 (Order 03-83), § 220-100-030, filed 4/30/03, effective 5/31/03. Statutory Authority: RCW 75.08.080, 84-19-053 (Order 84-144), § 220-100-030, filed 9/18/84; Order 76-40, § 220-100-030, filed 5/25/76.]

WAC 220-100-040 Scope and coverage of this chapter. (1) It is the intent of the department that compliance with this chapter shall constitute complete procedural compliance with SEPA for all actions as defined in WAC 197-11-704.

(2) This chapter applies to all department actions as defined in WAC 197-11-704.

(3) To the fullest extent possible, the department shall integrate procedures required by this chapter with existing planning and licensing procedures. These procedures should be initiated early, and undertaken in conjunction with other governmental operations to avoid lengthy time delays and unnecessary duplication of effort.

(4) To the fullest extent possible, the department shall:

(a) Prepare environmental documents that are concise, clear, and to the point, and that are supported by evidence that the necessary environmental analyses have been made.

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(b) Find ways to make the SEPA process more useful to decision makers and the public.

(c) Reduce unnecessary paperwork and the accumulation of extraneous background data.

[Statutory Authority: RCW 77.12.047. 03-10-038 (Order 03-83), § 220-100-040, filed 4/30/03, effective 5/31/03. Statutory Authority: RCW 75.08.080. 84-19-053 (Order 84-144), § 220-100-040, filed 9/18/84; 78-05-029 (Order 78-17), § 220-100-040, filed 4/17/78; Order 76-40, § 220-100-040, filed 5/25/76.]

WAC 220-100-045 Agency policy—Substantive authority and mitigation. (1) The policy of the department is to avoid or mitigate adverse environmental impacts that may result from department actions. This policy results from:

(a) The legislated duties of the department with respect to fish and wildlife; and

(b) Recognition of the fact that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment (RCW 43.21C.020(31)).

(2) If an action is subject to SEPA, and the proposed activity requires a permit from the department, and is reasonably likely to have an adverse environmental impact as identified in an environmental document, the department may:

(a) Require reasonable alternatives to the action and/or proven measures which will mitigate or eliminate the identified potential adverse impact, and make such alternatives and/or proven mitigation measures conditions of the department's approval; or

(b) Deny the proposal if significant adverse impacts as identified in a final or supplemental environmental impact statement prepared under chapter 197-11 WAC are not satisfactorily avoided or mitigated by proven techniques.

[Statutory Authority: RCW 77.12.047. 03-10-038 (Order 03-83), § 220-100-045, filed 4/30/03, effective 5/31/03. Statutory Authority: RCW 75.08.080. 84-19-053 (Order 84-144), § 220-100-045, filed 9/18/84; 78-05-029 (Order 78-17), § 220-100-045, filed 4/17/78.]

WAC 220-100-055 Timing of the SEPA process. (1) When another agency is the lead agency, the department's environmental review process will normally begin upon receipt of a determination of nonsignificance (DNS), determination of significance (DS), scoping notice, or draft environmental impact statement (DEIS). When the department is the lead agency for nonagency actions, review will normally begin upon receipt of a complete permit application and a complete environmental checklist. The department typically requests plans and a location map, pursuant to WAC 197-11-100. The applicant may choose to submit this information with the checklist so that review may proceed expeditiously. For department actions, environmental review will normally begin when the proposed action is sufficiently developed to allow preliminary decisions.

(2) Upon written request of an applicant, preliminary environmental review will be conducted prior to receipt of detailed project plans and specifications. In such instances, the applicant shall submit information judged by the department to be sufficient to make a preliminary review.

(3) The preliminary review will be advisory only and not binding upon the department. Final review and determination will be made only upon receipt of detailed project plans and

specifications. The department will make a determination within ninety days after the application and supporting documents are complete pursuant to RCW 43.21C.033.

[Statutory Authority: RCW 77.12.047. 03-10-038 (Order 03-83), § 220-100-055, filed 4/30/03, effective 5/31/03. Statutory Authority: RCW 75.08.080. 84-19-053 (Order 84-144), § 220-100-055, filed 9/18/84.]

WAC 220-100-057 Threshold levels adopted by local governments. During threshold determination and in determining whether a proposal is exempt from SEPA, the department shall give due consideration to exempt levels adopted by local governments under WAC 197-11-800.

[Statutory Authority: RCW 77.12.047. 03-10-038 (Order 03-83), § 220-100-057, filed 4/30/03, effective 5/31/03.]

WAC 220-100-058 Notice/statute of limitations. (1) The department, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080.

(2) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the department, applicant, or proponent pursuant to RCW 43.21C.080.

[Statutory Authority: RCW 77.12.047. 03-10-038 (Order 03-83), § 220-100-058, filed 4/30/03, effective 5/31/03.]

WAC 220-100-060 Summary of information which may be required of a private applicant. (1) The applicant for each proposal for which the department is the lead agency shall submit a complete environmental checklist along with a complete application for the required approval.

(2) After review of the environmental checklist, the department may require the applicant to submit additional information necessary to properly evaluate the potential environmental impacts of the project. Field investigation or research may be required of the applicant or conducted by the department at the applicant's cost.

(3) Preparation of EISs is the responsibility of the department's environmental services division. The responsible official shall be satisfied that all EISs issued by the department are in compliance with these rules and chapter 197-11 WAC.

(4) Whenever someone other than the department prepares an EIS the responsible official shall:

(a) Coordinate scoping to insure that the individual preparing the document receives all substantive information submitted by any agency or person.

(b) Direct the areas of research and study to be undertaken and the content and organization of the document.

(c) Assist in obtaining information on file with another agency that is needed by the person preparing the document.

(5) The responsible official may not require more information of a private applicant than allowed by these rules as supplemented and required by chapter 197-11 WAC.

(6) An EIS is required for each project for which a determination is made that the proposal will have a probable significant adverse impact on the environment. The applicant may prepare the EIS if judged by the department to be qualified, have the department develop the EIS, or hire a consultant to do so. In any case, the EIS shall be prepared under the direction of the responsible official at the expense of the applicant and final approval is that of the responsible official. Cost of preparing the EIS shall be paid by the applicant and

shall include fees of the consultant, the department consultation time and cost of any required materials. If the applicant chooses to hire a consultant to prepare the EIS, the consultant must be mutually agreed upon by the applicant and the department. A performance bond in an amount specified by the department may be required of the applicant to ensure payment of the department expenses pursuant to WAC 197-11-914. Private applicants are encouraged to be involved in the EIS preparation process.

(7) A supplemental EIS shall be prepared as an addition to the EIS if the department decides that:

(a) There are substantial changes to a proposal which will have a probable significant adverse environmental impact; or

(b) There is significant new information relative to the probable significant environmental impact of a proposal.

(c) Pursuant to WAC 197-11-600 (3)(c), written comments on the DEIS warrant additional discussion for purposes of its action than that found in the FEIS.

[Statutory Authority: RCW 77.12.047. 03-10-038 (Order 03-83), § 220-100-060, filed 4/30/03, effective 5/31/03. Statutory Authority: RCW 75.08.080. 84-19-053 (Order 84-144), § 220-100-060, filed 9/18/84; 78-05-029 (Order 78-17), § 220-100-060, filed 4/17/78; Order 76-40, § 220-100-060, filed 5/25/76.]

WAC 220-100-065 Assumption of lead agency status.

(1) Whenever the department is an agency of jurisdiction and determines that a DNS issued by another lead agency is inappropriate and that the proposal in question could cause significant harm to the resources under its jurisdiction, the department may assume lead agency status per WAC 197-11-948.

(2) Within ten days of assuming lead agency status, the department will notify the proponent of the proposal in writing as to the reasons for its assumption of lead agency status.

(3) Prior to preparation of an EIS for the proposal, the department will consult with the proponent and give the proponent an opportunity to modify or change the proposal in such a way that an EIS may not be necessary as outlined in WAC 197-11-360(4).

[Statutory Authority: RCW 77.12.047. 03-10-038 (Order 03-83), § 220-100-065, filed 4/30/03, effective 5/31/03. Statutory Authority: RCW 75.08.080. 84-19-053 (Order 84-144), § 220-100-065, filed 9/18/84.]

WAC 220-100-068 Formal administrative appeal of department environmental determinations. (1) A person aggrieved by the department's environmental determination is entitled to an opportunity for hearing, pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

(2) To obtain a hearing, a written request must be filed with the department. The mailing address is: Washington Department of Fish and Wildlife, Habitat Program, 600 Capitol Way North, Olympia, WA 98501-1091. Requests must be filed within thirty days of the department's decision.

(3) The request must be plainly labeled, "request for a formal administrative appeal" and must state within the body of the letter:

(a) The name, address, and phone number of the person requesting the appeal;

(b) The specific agency action that the person contests;

(c) Whether the person is the proponent of the proposal or other basis for interest in the agency action in question;

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(d) The date of the SEPA determination;

(e) The attorney's name, address, and phone number, if the person is represented by legal counsel.

(4) The appeal may be conducted by the director, the director's designee, or by an administrative law judge (ALJ) appointed by the office of administrative hearings. If conducted by an ALJ, the ALJ shall issue an initial order pursuant to RCW 34.05.461. The director or the director's designee shall review the initial order and enter a final order as provided by RCW 34.05.464. All hearings conducted by the director, the director's designee, or an ALJ pursuant to this subsection shall comply with the Administrative Procedure Act and the model rules of procedure, chapter 10-08 WAC.

(5) For additional information on appeal procedures, reference should be made to WAC 197-11-680 (3)(a).

[Statutory Authority: RCW 77.12.047. 03-10-038 (Order 03-83), § 220-100-068, filed 4/30/03, effective 5/31/03.]

WAC 220-100-070 Designation of responsible official. Under normal circumstances, the responsible official is the SEPA/NEPA coordinator or the habitat program's designee. The responsible official shall carry out duties and functions for the purpose of assuring the department's compliance with SEPA and SEPA rules. The responsible official may delegate duties and functions assigned under this chapter and chapter 197-11 WAC. When significant involvements of the department converge at a level higher than the SEPA/NEPA coordinator, the director or the director's designee may be assigned the role of responsible official.

[Statutory Authority: RCW 77.12.047. 03-10-038 (Order 03-83), § 220-100-070, filed 4/30/03, effective 5/31/03. Statutory Authority: RCW 75.08.080. 84-19-053 (Order 84-144), § 220-100-070, filed 9/18/84; Order 76-40, § 220-100-070, filed 5/25/76.]

WAC 220-100-075 Mitigated DNS. (1) An applicant may ask the department whether issuance of a DS is likely for a proposal. This request for early notice must:

(a) Be written;

(b) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and

(c) Precede the department's actual threshold determination for the proposal.

(2) The responsible official shall respond to the request within twenty working days of receipt of the letter; the response shall:

(a) Be written;

(b) State whether the department is considering issuance of a DS;

(c) Indicate the general or specific area(s) of concern that led the department to consider a DS; and

(d) State that the applicant may change or clarify the proposal to mitigate the impacts indicated in the letter, revising the environmental checklist as necessary to reflect the changes or clarifications.

(3) The department shall not continue with the threshold determination until receiving a written response from the applicant changing or clarifying the proposal or asking that the threshold determination be based on the original proposal.

(4) If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the

department will make its threshold determination based on the changed or clarified proposal. The application is not complete until the applicant responds to subsection (3) of this section.

(a) If the department response to the request for early notice indicated specific mitigation measures that would remove all probable significant adverse environmental impacts, and the applicant changes or clarifies the proposal to include all of those specific mitigation measures, the department shall issue a DNS and circulate the DNS for comments as in WAC 197-11-340(2).

(b) If the department indicated general or specific areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the department shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.

(5) The department may specify mitigation measures that would allow it to issue a DNS without a request for early notice from an applicant. If it does so, and the applicant changes or clarifies the proposal to include those measures, the department shall issue a DNS and circulate it for review under WAC 197-11-340(2).

(6) When an applicant changes or clarifies the proposal, the clarifications or changes may be included in written attachments to the documents already submitted. If the environmental checklist and supporting documents would be difficult to read and/or understand because of the need to read them in conjunction with the attachment(s), the department may require the applicant to submit a new checklist.

(7) The department may change or clarify features of its own proposals before making the threshold determination.

(8) The department's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarification of or changes to a proposal, as opposed to a written request for early notice, shall not bind the department to consider the clarification or changes in the threshold determination.

(9) When an applicant submits a changed or clarified proposal pursuant to this section, it shall be considered part of the applicant's application for a permit or other approval for all purposes. Unless the department's decision expressly states otherwise, when a mitigated DNS is issued for a proposal, any decision approving the proposal shall be based on the proposal as changed or clarified pursuant to this section.

[Statutory Authority: RCW 77.12.047. 03-10-038 (Order 03-83), § 220-100-075, filed 4/30/03, effective 5/31/03. Statutory Authority: RCW 75.08.080. 84-19-053 (Order 84-144), § 220-100-075, filed 9/18/84.]

WAC 220-100-080 SEPA public information center.

The department designates the environmental services division of the habitat program as its SEPA public information center. The mailing address is SEPA Coordinator, 600 Capitol Way North, Olympia, Washington 98501-1091.

[Statutory Authority: RCW 77.12.047. 03-10-038 (Order 03-83), § 220-100-080, filed 4/30/03, effective 5/31/03. Statutory Authority: RCW 75.08.080. 84-19-053 (Order 84-144), § 220-100-080, filed 9/18/84; 78-05-029 (Order 78-17), § 220-100-080, filed 4/17/78; Order 76-40, § 220-100-080, filed 5/25/76.]

WAC 220-100-095 Public notice. (1) When required under chapter 197-11 WAC, the department will give public notice by one or more of the following methods as appropriate for the specific circumstances:

(a) Notifying public and private groups and agencies with known interest in a certain proposal or in the type of proposals being considered;

(b) Notifying individuals with known interest in a certain proposal or in the type of proposal being considered;

(c) Publication in a newspaper of general circulation in the city, county or general area where the proposal will be implemented;

(d) Posting the property for site specific proposals;

(e) Notifying the news media; and/or

(f) Publishing notice on the department's internet site.

(2) Whenever possible, the department shall integrate these public notice requirements with existing notice procedures, including publication in the SEPA Register, for any department or commission permits or approvals required for the proposal.

(3) The department may require an applicant to complete the public notice requirements for the applicant's proposal at the applicant's expense.

[Statutory Authority: RCW 77.12.047. 03-10-038 (Order 03-83), § 220-100-095, filed 4/30/03, effective 5/31/03. Statutory Authority: RCW 75.08.080. 84-19-053 (Order 84-144), § 220-100-095, filed 9/18/84.]

WAC 220-100-110 Adoption by reference—Substantial compliance. Except as modified by this chapter, the department adopts the SEPA guidelines as adopted by the department of ecology (chapter 197-11 WAC) and as modified or amended from time to time. Substantial compliance with these guidelines shall constitute compliance with this chapter.

[Statutory Authority: RCW 77.12.047. 04-14-006 (Order 04-155), § 220-100-110, filed 6/24/04, effective 7/25/04. Statutory Authority: RCW 75.08.080. 84-19-053 (Order 84-144), § 220-100-110, filed 9/18/84; 78-05-029 (Order 78-17), § 220-100-110, filed 4/17/78; Order 76-40, § 220-100-110, filed 5/25/76.]

WAC 220-100-115 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

[Statutory Authority: RCW 75.08.080. 84-19-053 (Order 84-144), § 220-100-115, filed 9/18/84.]