

# Chapter 25-42 WAC

## STATE ENVIRONMENTAL POLICY ACT RULES

### WAC

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**WAC 25-42-010 Definitions.** The definitions of the words and terms of WAC 197-11-700 through 197-11-799 are made a part of this chapter along with the following additions:

(1) "Department" means the Washington state department of archaeology and historic preservation.

(2) "Director" means the state historic preservation officer as provided for in chapter 27.34 RCW.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-42-010, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.34.220 and 43.21C.120. WSR 86-13-002 (Order 10), § 25-42-010, filed 6/5/86.]

**WAC 25-42-020 Impact of SEPA on department.** The department fully endorses the intent and purpose of SEPA and will make every effort to implement and fulfill the intent and requirements of SEPA and the SEPA rules. The capacity of the department to provide full service to the public and other agencies is limited by funds and staffing. The department will make every effort to implement SEPA in the best manner possible with the resources available.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-42-020, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.34.220 and 43.21C.120. WSR 86-13-002 (Order 10), § 25-42-020, filed 6/5/86.]

**WAC 25-42-030 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 guidelines, 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.

(2/15/06)

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-42-030, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.34.220 and 43.21C.120. WSR 86-13-002 (Order 10), § 25-42-030, filed 6/5/86.]

### **WAC 25-42-040 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 actions as defined in WAC 197-11-704 and applies to all activities of the department. Furthermore, although these guidelines normally do not apply to actions of the department exempted under WAC 197-11-800, the department accepts the responsibility of attempting to follow the intent of SEPA and its decision making process for exempt actions.

(3) To the fullest extent possible, the department shall integrate procedures required by this chapter with existing planning and permitting 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.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-42-040, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.34.220 and 43.21C.120. WSR 86-13-002 (Order 10), § 25-42-040, filed 6/5/86.]

**WAC 25-42-050 Agency policy—Substantive authority and mitigation.** (1) It is the policy of the department to avoid or mitigate adverse environmental impacts which may result from its decisions.

(2) If an action is subject to SEPA, including an activity or activities requiring a permit from the department, and is reasonably likely to have an adverse environmental impact as identified in an environmental document, the department will:

(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 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-42-050, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.34.220 and 43.21C.120. WSR 86-13-002 (Order 10), § 25-42-050, filed 6/5/86.]

**WAC 25-42-060 Timing of the SEPA process.** (1) The 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 another agency is

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the lead agency. When the department is the lead agency for nonagency actions, review will begin upon receipt of a complete permit application and a complete environmental checklist. The department typically requests plans, a location map, and a project description, pursuant to WAC 197-11-100, but may request additional information of the applicant as needed to make a threshold determination. The applicant should submit this information with the checklist so that review may proceed expeditiously. For agency 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.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-42-060, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.34.220 and 43.21C.120. WSR 86-13-002 (Order 10), § 25-42-060, filed 6/5/86.]

**WAC 25-42-070 Summary of information which may be required of an applicant.** (1) The applicant for each project 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) A draft and final 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. Preparation of the EIS is the responsibility of the department, by or under the direction of its responsible official, as specified by department procedures. No matter who participates in the preparation of the EIS, it is the EIS of the department. The responsible official, prior to distributing an EIS, shall be satisfied that it complies with this chapter and chapter 197-11 WAC.

(4) The department may have an EIS prepared by department staff, an applicant or its agent, or by an outside consultant retained by either an applicant or the department. The department shall assure that the EIS is prepared in a professional manner and with appropriate interdisciplinary methodology. The responsible official shall direct the areas of research and examination to be undertaken as a result of the scoping process, as well as the organization of the resulting document.

(5) If a person other than the department is preparing the EIS, the department shall:

(a) Coordinate any scoping procedures so that the individual preparing the EIS receives all substantive information submitted by any agency and the public;

(b) Assist in obtaining any information on file with other agencies that is needed by the person preparing the EIS;

(c) Allow any party preparing an EIS access to all public records of the department that relate to the subject of the EIS, under RCW 42.17.250 through 42.17.340.

(6) Normally, the department will prepare an EIS for its own proposals.

(7) For applicant proposals, the department normally will require the applicant to prepare or help prepare the EIS at the applicant's expense, under provisions of this chapter and chapter 197-11 WAC. Expenses shall include fees of any consultants, if required, the department's consultation time and cost of any required materials. A performance bond in an amount specified by the department may be required of the applicant to ensure payment of the department's expenses.

(8) The department may require an applicant to provide information that the department does not possess, including specific investigations.

(9) A supplemental EIS shall be prepared as an addition to either the draft or final EIS if the department determines 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; or

(c) Written comments on the DEIS warrant additional environmental review.

The provisions of subsections (3), (4), (5), (6), (7), and (8) of this section except for the first sentence of subsection (3) of this section, also pertain to a supplemental EIS or addendum.

(10) Upon the written request of an applicant for a project for which the department is the lead agency, the department will consider initiating environmental review and preparation of an EIS at the conceptual stage as opposed to the final detailed design state.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-42-070, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.34.220 and 43.21C.120. WSR 86-13-002 (Order 10), § 25-42-070, filed 6/5/86.]

**WAC 25-42-080 Assumption of lead agency status.**

(1) Whenever the department 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 the department's jurisdiction, the department will 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 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-42-080, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.34.220 and 43.21C.120. WSR 86-13-002 (Order 10), § 25-42-080, filed 6/5/86.]

**WAC 25-42-090 Designation of responsible official.**

Under normal circumstances, the responsible official is the director or the director's designee. The responsible official shall carry out duties and functions for the purpose of assuring the department's compliance with SEPA and SEPA guidelines. The responsible official may delegate duties and functions assigned under this chapter and chapter 197-11 WAC; the responsible official alone, however, is wholly responsible for proper accomplishment of such duties and functions.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-42-090, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.34.220 and 43.21C.120. WSR 86-13-002 (Order 10), § 25-42-090, filed 6/5/86.]

**WAC 25-42-100 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 in writing to the request within ten working days of receipt of the letter. The response shall:

- (a) State whether the department is considering issuance of a DS; and, if so, indicate the general or specific area(s) of concern that led the department to consider a DS; and
- (b) 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.

(a) If the department's 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 will issue a DNS and circulate the DNS for review and comments per 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 and comment under WAC 197-11-340(2).

(2/15/06)

(6) When an applicant changes or clarifies the proposal, the clarification 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 constructed 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 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-42-100, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.34.220 and 43.21C.120. WSR 86-13-002 (Order 10), § 25-42-100, filed 6/5/86.]

**WAC 25-42-110 SEPA public information center.**

The department designates its main department as its SEPA public information center. The mailing address is P.O. Box 48343, Olympia, Washington 98504-8343; telephone 360-586-3065.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-42-110, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.34.220 and 43.21C.120. WSR 86-13-002 (Order 10), § 25-42-110, filed 6/5/86.]

**WAC 25-42-120 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 and tribes 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 area in which the proposal will be implemented; and/or
- (d) Posting on the property site in question.

(2) The department may require an applicant to perform the public notice requirements at the applicant's expense.

[Statutory Authority: RCW 27.34.220, 27.53.140, 43.21C.120. WSR 06-06-001, § 25-42-120, filed 2/15/06, effective 3/18/06. Statutory Authority: RCW 27.34.220 and 43.21C.120. WSR 86-13-002 (Order 10), § 25-42-120, filed 6/5/86.]

**WAC 25-42-130 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.

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[Statutory Authority: RCW 27.34.220 and 43.21C.120. WSR 86-13-002 (Order 10), § 25-42-130, filed 6/5/86.]