

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

Department of Agriculture

(agency name)

Administrative Order No. 1841

(1) I, M. Keith Ellis, director of Department of Agriculture

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to: Chapter 16-236 WAC SEPA Rules

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. filed with the code reviser on. These rules shall take effect: [] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2). [] at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, M. Keith Ellis, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

RCW 43.21C.120 requires that all agencies have rules promulgated by October 1, 1984 that implement the state-wide rules in Chapter 197-11 WAC, the SEPA rules. In addition to promulgating these emergency rules, a public hearing is to be scheduled for November 12 in Olympia, and permanent rules will be filed following that hearing

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

[x] (a) This rule is promulgated pursuant to RCW 43.21C.120 and is intended to administratively implement that statute.

[] (b) This rule is promulgated pursuant to RCW which directs that the

(agency) has authority to implement the provisions of (name of act or RCW citation)

[] (c) This rule is promulgated under the general rule-making authority of the (agency)

as authorized in RCW

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED October 1 19 84

STATE OF WASHINGTON FILED

OCT 1 1984

CODE REVISER'S OFFICE

WSR 84-20-064

By M. Keith Ellis Director

Title

Chapter 16-236 WAC
SEPA PROCEDURES

WAC	16-236-010	Authority.
	16-236-020	Adoption by reference.
	16-236-030	Purpose.
	16-236-040	Additional definition.
	16-236-050	Designation of responsible official.
	16-236-060	EIS preparation.
	16-236-070	Environmentally sensitive areas.
	16-236-080	Threshold levels adopted by local governments.
	16-236-090	Coordination of combined state-federal action.
	16-236-100	Public notice requirements.
	16-236-110	Notice/statute of limitations.
	16-236-120	Policies and procedures for conditioning or denying permits or other approvals.
	16-236-130	Severability.

NEW SECTION

WAC 16-236-010 AUTHORITY. These rules are promulgated under RCW 43.21C.120 (the State Environmental Policy Act) and chapter 197-11 WAC (SEPA Rules).

NEW SECTION

WAC 16-236-020 ADOPTION BY REFERENCE. The department of agriculture adopts the following sections of chapter 197-11 WAC by reference:

WAC	197-11-020	Purpose.
	197-11-040	Definitions.
	197-11-050	Lead agency.
	197-11-055	Timing of the SEPA process.
	197-11-060	Content of environmental review.
	197-11-070	Limitations on actions during SEPA process.
	197-11-080	Incomplete or unavailable information.
	197-11-090	Supporting documents.
	197-11-100	information required of applicants.
	197-11-300	Purpose of this part.
	197-11-305	Categorical exemptions.
	197-11-310	Threshold determination required.
	197-11-315	Environmental checklist.
	197-11-330	Threshold determination process.
	197-11-335	Additional information.
	197-11-340	Determination of nonsignificance (DNS).
	197-11-350	Mitigated DNS.
	197-11-360	Determination of significance (DS)/initiation of scoping.

197-11-390 Effect of threshold determination.
197-11-400 Purpose of EIS.
197-11-402 General requirements.
197-11-405 EIS types.
197-11-406 EIS timing.
197-11-408 Scoping.
197-11-410 Expanded scoping. (Optional)
197-11-425 Style and size.
197-11-430 Format.
197-11-435 Cover letter or memo.
197-11-440 EIS contents.
197-11-442 Contents of EIS on nonproject proposals.
197-11-443 EIS contents when prior nonproject EIS.
197-11-444 Elements of the environment.
197-11-448 Relationship of EIS to other considerations.
197-11-450 Cost-benefit analysis.
197-11-455 Issuance of DEIS.
197-11-460 Issuance of FEIS.
197-11-500 Purpose of this part.
197-11-502 Inviting comment.
197-11-504 Availability and cost of environmental documents
197-11-508 SEPA register.
197-11-535 Public hearings and meetings.
197-11-545 Effect of no comment.
197-11-550 Specificity of comments.
197-11-560 FEIS response to comments.
197-11-570 Consulted agency costs to assist lead agency.
197-11-600 When to use existing environmental documents.
197-11-610 Use of Nepa documents.
197-11-620 Supplemental environmental impact statement--
Procedures.
197-11-625 Addenda--Procedures.
197-11-630 Adoption--Procedures.
197-11-635 Incorporation by reference--Procedures.
197-11-640 Combining documents.
197-11-650 Purpose of this part.
197-11-655 Implementation.
197-11-660 Substantive authority and mitigation.
197-11-680 Appeals.
197-11-700 Definitions.
197-11-702 Act.
197-11-704 Action.
197-11-706 Addendum.
197-11-708 Adoption.
197-11-710 Affected Tribe.
197-11-712 Affecting.
197-11-714 Agency.
197-11-716 Applicant.
197-11-718 Built environment.
197-11-720 Categorical exemption.
197-11-722 Consolidated appeal.
197-11-724 Consulted agency.
197-11-726 Cost-benefit analysis.
197-11-728 County/city.
197-11-730 Decision maker.

197-11-734 Determination of nonsignificance (DNS).
197-11-736 Determination of significance (DS).
197-11-738 EIS.
197-11-740 Environment.
197-11-742 Environmental checklist.
197-11-744 Environmental document.
197-11-746 Environmental review.
197-11-748 Environmental sensitive area.
197-11-750 Expanded scoping.
197-11-752 Impacts.
197-11-754 Incorporation by reference.
197-11-756 Lands covered by water.
197-11-758 Lead agency.
197-11-760 License.
197-11-762 Local agency.
197-11-764 Major action.
197-11-766 Mitigated DNS.
197-11-768 Mitigation.
197-11-770 Natural environment.
197-11-772 NEPA.
197-11-774 Nonproject.
197-11-776 Phased review.
197-11-778 Preparation.
197-11-780 Private project.
197-11-782 Probable.
197-11-784 Proposal.
197-11-786 Reasonable alternative.
197-11-788 Responsible official.
197-11-790 SEPA.
197-11-792 Scope.
197-11-793 Scoping.
197-11-794 Significant.
197-11-796 State agency.
197-11-797 Threshold determination.
197-11-799 Underlying governmental action.
197-11-800 Categorical exemptions.
197-11-810 Exemptions and nonexemptions applicable to specific state agencies.
197-11-850 Department of agriculture.
197-11-880 Emergencies.
197-11-890 Petitioning DOE to change exemptions.
197-11-900 Purpose of this part.
197-11-908 Environmentally sensitive areas.
197-11-912 Procedures on consulted agencies.
197-11-916 Application to ongoing actions.
197-11-917 Relationship to chapter 197-10 WAC.
197-11-920 Agencies with environmental expertise.
197-11-922 Lead agency rules.
197-11-924 Determining the lead agency.
197-11-926 Lead agency for governmental proposals.
197-11-928 Lead agency for public and private proposals.
197-11-930 Lead agency for private projects with one agency with jurisdiction.
197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the

- agencies is a county/city.
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
 - 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
 - 197-11-938 Lead agencies for specific proposals.
 - 197-11-940 Transfer of lead agency status to a state agency.
 - 197-11-942 Agreements on lead agency status.
 - 197-11-944 Agreements on division of lead agency duties.
 - 197-11-946 DOE resolution of lead agency disputes.
 - 197-11-948 Assumption of lead agency status.
 - 197-11-960 Environmental checklist.
 - 197-11-965 Adoption notice.
 - 197-11-970 Determination of nonsignificance (DNS).
 - 197-11-980 Determination of significance and scoping notice (DS).
 - 197-11-985 Notice of assumption of lead agency status.
 - 197-11-990 Notice of action.

NEW SECTION

WAC 16-236-030 PURPOSE. (1) This chapter implements the state-wide rules in chapter 197-11 WAC as they apply to the department of agriculture.

(2) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the department to use all practical means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

- (a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (b) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- (c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (d) Preserve important historic, cultural, and natural aspects of our national heritage;
- (e) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- (f) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- (g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The department recognizes 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.

NEW SECTION

WAC 16-236-040 ADDITIONAL DEFINITION. "Department" means department of agriculture unless otherwise indicated.

NEW SECTION

WAC 16-236-050 DESIGNATION OF RESPONSIBLE OFFICIAL. Within the department of agriculture the ultimate responsible official is the director. The responsible official for a specific proposal shall be the assistant to the director in charge of environmental affairs or his/her designee.

NEW SECTION

WAC 16-236-060 EIS PREPARATION. (1) Preparation of draft and final EISs and SEISs is the responsibility of the assistant to the director in charge of environmental affairs or his/her designee. The responsible official shall be satisfied that all EISs and SEIS issued by the department are in compliance with these rules and chapter 197-11 WAC.

(2) Any draft or final EIS or SEIS shall be prepared by the department, the applicant, or by a consultant mutually agreed upon by the department and applicant.

(3) Whenever someone other than the department prepares a draft or final EIS or SEIS, the responsible official shall:

(a) Coordinate scoping to ensure 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.

(d) Allow the person preparing the document access to department records relating to the document, as prescribed in chapter 16.06 WAC, Public Records.

(4) Nothing herein shall be construed to prohibit the department from charging any fee of an applicant that the department is otherwise authorized to charge (see WAC 197-11-914). A performance bond in amount specified by the department may be required of the applicant to ensure payment of department expenses in preparing, in whole or in part, a draft or final EIS or SEIS.

NEW SECTION

WAC 16-236-070 ENVIRONMENTALLY SENSITIVE AREAS. During threshold determination and in determining whether a proposal is exempt from SEPA, the department shall give all due consideration to "environmentally sensitive area" designations made by local governments under WAC 197-11-908.

NEW SECTION

WAC 16-236-080 THRESHOLD LEVELS ADOPTED BY LOCAL GOVERNMENTS. During threshold determination and in determining whether a proposal is exempt from SEPA, the department shall respect threshold levels adopted by local governments under WAC 197-11-800.

NEW SECTION

WAC 16-236-090 COORDINATION OF COMBINED STATE-FEDERAL ACTION. When the department considers actions which also involve federal actions, it shall coordinate the two governmental processes so that only one EIS, or other environmental document, need be prepared for that proposal.

NEW SECTION

WAC 16-236-100 PUBLIC NOTICE REQUIREMENTS. (1) When these rules require notice of environmental document preparation or availability, as a lead agency and taking into consideration the geographic area affected by the proposal, the size and complexity of the proposal, the public notice requirements for the permit or approval required from the department, public interest expressed in the proposal, and whether the proposal is a project or regulation, the department shall give public notice by using at least one of the following methods:

- (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 which have expressed interest in a certain proposal or in the type of proposal being considered;
 - (d) Notifying the news media; and/or
 - (e) Publishing notice in a department newsletter.
- (2) Whenever possible, the department shall integrate these public notice requirements with existing notice procedures for

any department 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 his or her expense.

NEW SECTION

WAC 16-236-110 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.

NEW SECTION

WAC 16-236-120 POLICIES AND PROCEDURES FOR CONDITIONING OR DENYING PERMITS OR OTHER APPROVALS. (1) The policies and goals in this section are supplementary to existing authorities of the department.

(2) It is the policy of the department to avoid or mitigate adverse environmental impacts which may result from the department's decisions.

(3) The department shall ensure that presently unquantified environmental amenities and values will be given appropriate consideration in decision-making along with economic and technical considerations.

(4) When the environmental document for a proposal shows it will cause significant adverse impacts, the responsible official shall consider whether:

(a) The environmental document identified mitigation measures that are reasonable and capable of being accomplished;

(b) Other local, state, or federal requirements and enforcement would mitigate the significant adverse environmental impacts; and

(c) Reasonable mitigation measures are sufficient to mitigate the significant adverse impacts.

(5) When the environmental document for a proposal shows it will cause significant adverse impacts, the responsible official may:

(a) Condition the approval for a proposal if mitigation measures are reasonable and capable of being accomplished and the proposal is inconsistent with the policies in this section; or

(b) Deny the permit or approval for a proposal if reasonable mitigation measures are insufficient to mitigate significant adverse environmental impacts and the proposal is inconsistent with the policies in this section.

(6) The procedures in WAC 197-110-660 shall also be followed when conditioning or denying permits or other approvals.

NEW SECTION

WAC 16-236-130 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.