



DEPARTMENT OF
ECOLOGY
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Preliminary Cost-Benefit Analysis and Least Burdensome Alternative Analysis

*Chapter 197-11 WAC
SEPA Rules (State Environmental Policy Act)*

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Preliminary Cost-Benefit and Least Burdensome Alternative Analyses

Chapter 197-11 WAC SEPA Rules (State Environmental Policy Act)

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Executive Summary

This report presents the economic analyses performed by the Washington State Department of Ecology (Ecology) to estimate the benefits and costs of proposed amendments to the SEPA Rules (State Environmental Policy Act, “SEPA”; Chapter 197-11 WAC). These analyses – The Cost-Benefit Analysis (CBA) and the Least Burdensome Alternative Analysis (LBA) are used to develop an understanding of the economic impact of the rule amendments. Ecology did not prepare an associated Small Business Economic Impact Statement (SBEIS) for this rule making, because the rule amendments do not impose costs on businesses.

The State Environmental Policy Act (SEPA) was enacted in 1971 (RCW 43.21C), and provides a framework for considering environmental consequences and identifying likely significant adverse impacts. If a proposal involves government action and is not categorically exempt, environmental review is required. This proposed rulemaking contains both housekeeping amendments (to correct typographical errors or clarify language without changing its effect) and changes to increase the number of proposals that are categorically exempt.

In 2012, the Legislature directed Ecology to review and update all exemptions listed in WAC 197-11-800. In 2015, the Legislature directed that the Washington State Department of Transportation (WSDOT) establish a workgroup to look at SEPA and the regulatory process in connection with transportation related exemptions. It also directed Ecology to conduct rulemaking exempting structurally deficient bridges from SEPA review. While this workgroup has yet to be established, a transportation advisory committee has been established, including State agencies, Business, City, County, Environmental, Agricultural, Tribal and cultural Resources interests. The proposed rule amendments exempt duplicative SEPA review, and modernize the rules that guide state and local agencies in conducting SEPA reviews.

Ecology does not expect the rule amendments to generate costs. The rule amendments only reduce burden and compliance costs.

Ecology expects the following benefits associated with the rule amendments:

- Housekeeping amendments increase the readability and understanding of the requirements of the rule.
- The transportation based exemptions added as a result of input from the transportation advisory committee eliminate duplicative SEPA review.

Based on assessment of the likely costs and benefits, Ecology concludes that the likely benefits of the rule amendments exceed their costs. There are zero costs expected, and positive benefits expected

Ecology assessed alternatives to the rule amendments, and determined whether they met the general goals and specific objectives of the authorizing statute. Of those that would meet these objectives, Ecology determined whether the rule amendments were the least burdensome.

Chapter 1: Background and Scope

1.1 Introduction

This report presents the economic analyses performed by the Washington State Department of Ecology (Ecology) to estimate benefits and costs of the amendments to the SEPA Rules (State Environmental Policy Act, “SEPA”; Chapter 197-11 WAC). These analyses – The Cost-Benefit Analysis (CBA) and the Least Burdensome Alternative Analysis (LBA; see Chapter 6) are used to develop an understanding of the economic impact of the rule amendments. Ecology did not prepare an associated Small Business Economic Impact Statement (SBEIS) for this rule making, because the rule amendments do not impose costs on businesses.

The Washington Administrative Procedure Act (RCW 34.05.328) requires Ecology to evaluate significant legislative rules to “[d]etermine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the law being implemented.” Ecology’s analysis is based on the best available information at the time of this analysis.

The APA also requires Ecology to “determine, after considering alternative versions of the rule...that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives” of the governing and authorizing statutes. Chapter 6 of this document describes that determination.

1.2 Background

The State Environmental Policy Act (SEPA) was enacted in 1971 (RCW 43.21C), and provides a framework for considering environmental consequences and identifying likely significant adverse impacts. If a proposal involves government action and is not categorically exempt, environmental review is required. This rulemaking contains both housekeeping amendments (to correct typographical errors or clarify language without changing its effect) and changes to increase the number of proposals that are categorically exempt.

Parties affected by this rulemaking may include those proposing projects that fall under SEPA review, and also counties, cities, and state agencies that are identified as lead agencies under the SEPA rules. Lead agencies are responsible for conducting and documenting the review.

The general public may also be affected by this rulemaking if increased exemptions are associated with an increase in adverse environmental impacts.

1.3 Reason for the rule proposal

In 2012, the Legislature directed Ecology to review and update all exemptions listed in WAC 197-11-800 (among other activities). In Section 1 of Chapter 1, Laws of 2012 1st Special Session (2ESSB 6406):

“The legislature finds that significant opportunities exist to modify programs that provide for management and protection of the state's natural resources...in order to streamline regulatory processes and achieve program efficiencies, while at the same time increasing the sustainability of program funding and maintaining current levels of natural resource protection.”

In 2015, HB 1851 was passed, amending chapter 43.21c RCW directing Ecology to conduct rulemaking exempting structurally deficient bridges for cities, towns, and counties from SEPA review. Additionally, SB 5994 amended chapter 47.01 RCW directing that the Washington State Department of Transportation (WSDOT) establish a workgroup to look at SEPA and the regulatory process in connection with transportation related SEPA exemptions. While this workgroup has yet to be established, a transportation advisory committee has been established. This advisory committee includes State agencies, Business, City, County, Environmental, Agricultural, Tribal and cultural Resources interests.

The proposed rule amendments exempt duplicative SEPA review, and modernize the rules that guide state and local agencies in conducting SEPA reviews, in light of the increased environmental protections in place under RCW 36.70A (Growth Management Act), RCW 90.58 (Shoreline Management Act) and other laws.

1.3 Scope of analysis

Ecology analyzes the impacts of Ecology’s rule proposal in the following sections:

- **Chapter 2: Baseline for Analysis**
Explains the baseline concepts to which Ecology’s rule proposal was compared in the analysis, and analyzes the rule impacts.
- **Chapter 3: Likely Costs of Proposed Rule**
Explains the likely costs of the proposed rule.
- **Chapter 4: Likely Benefits of Proposed Rule**
Explains the likely benefits of the proposed rule.
- **Chapter 5: Conclusion**
Summarizes Ecology’s results and includes comments on the analysis.
- **Chapter 6: Least Burdensome Alternative Analysis**
Explains Ecology’s determination on whether the proposed rules place the least burden possible on those required to comply with it, while fulfilling the goals and objectives of the authorizing legislation.

Chapter 2: Baseline for Analysis

2.1 Introduction

In this chapter, Ecology describes the baseline to which the proposed rules are compared. The baseline is the regulatory context in the absence of the amendments being proposed.

Ecology also describes the proposed rule amendments, and identifies which amendments require analysis under the Administrative Procedure Act (Chapter 34.05 RCW). Here Ecology addresses complexities in the scope of the analysis, and indicates which cost and benefit analyses are discussed in Chapters 3 and 4.

2.2 Baseline

The baseline is the regulatory context in the absence of the changes being proposed. In most cases, the regulatory baseline is the existing rule. If there is no existing rule, the federal or local rule is the baseline. If there is no existing regulation at any level of government, the baseline is the statute authorizing the rule.

The baseline for the proposed rule amendments to the SEPA Rules include the current SEPA rule, as well as any other federal, state or local rules and statutes. This is the third round of rulemaking as a result of amendments to chapter 43.21c RCW (2ESSB 6406) (the rule was amended in 2012 and 2014). Although the legislature directed Ecology to review and update all exemptions listed in WAC 197-11-800, with specific direction to streamline regulatory processes and achieve program efficiencies, because the legislature was nonspecific, it is not possible separate out which amendments below are due purely to Ecology's discretion and which are mandated by statute. As a result, we analyze all changes to the rule resulting from this legislation below.

In 2015, SB 5994 amended chapter 47.01 RCW directing WSDOT to convene a workgroup to look at SEPA and the regulatory process in connection with transportation related SEPA exemptions. In anticipation, WSDOT worked with Ecology on the proposed rulemaking. As the legislature was nonspecific it is not possible separate out which amendments below are due purely to Ecology's discretion and which are mandated by statute. As a result, we analyze all changes to the rule resulting from this legislation below.

Also in 2015, HB 1851 was passed, amending chapter 43.21c RCW directing Ecology to exempt structurally deficient bridges for cities, towns, and counties. Because these exemptions are mandated by statute, they are exempt from the current analysis.

2.3 Changes under Ecology's Proposed Rule

Ecology qualitatively or quantitatively analyzed the impacts of the following proposed changes to the SEPA Rules. We also identify if the change was not analyzed (for example if it was mandated by statute).

2.3.1 Housekeeping

We do not analyze these changes quantitatively. We do not expect significant costs or benefits to accrue from these rule amendments.

2.3.2 Transportation based exemptions

In response to suggestions from the advisory committee created in response to HB 1851 and SB 5994¹, Ecology is proposing several additions/modifications to the list of exemptions found in chapter 197-11 WAC. These exemptions include:

- Adding speed limit designations and adding or removing turn lanes to WAC 197-11-800 (2)(d)(i)
- Adding rechannelization to WAC 197-11-800 (2)(d)(vi)
- Adding designation of transit-only lanes to WAC 197-11-800 (2)(b)
- Adding other changes in motor vehicle access to WAC 197-11-800 (2)(i)
- Adding sidewalk extensions to WAC 197-11-800 (2)(d)(ix)
- Adding a new section: City, Town, and County structurally deficient bridges WAC 197-11-800 (27)

This final addition is not analyzed, as it is mandated by HB 1851.

¹ Participants in the Advisory Committee included: State agencies, Business, City, County, Environmental, Agricultural, Tribal and cultural Resources interests.

Chapter 3: Likely Costs of Rule Amendments

3.1 Introduction

Ecology estimated the expected costs associated with the rule amendments to SEPA Rules, as compared to the baseline described in section 2.2 of this document. The baseline is the regulatory circumstances in the absence of the rule amendments.

3.2 Likely costs of the rule amendments

Ecology does not expect the rule amendments to generate costs. The rule amendments only reduce burden and compliance costs (i.e., create benefits; see Chapter 4), primarily through a minor increase in exempted activities.

Ecology reduced compliance burden only where other existing regulation required sufficiently similar compliance tasks (another law or rule requiring a review). This means that while entities would need to do less under the SEPA rules, they would still have compliance behaviors, due to requirements in other laws, rules, ordinances, etc., that met the objectives of the baseline SEPA rule. Since no increased impacts to the natural and built environment will occur under the rule amendments, the amendments do not generate any costs.

Chapter 4: Likely Benefits of Rule Amendments

4.1 Introduction

Ecology analyzed the benefits of the rule amendments compared to the baseline as described in Chapter 2.2. These benefits are based on the rule amendments' reductions in compliance burden. As there are no costs associated with the rule amendments, Ecology did not quantify the benefits of the rule amendments. Instead, Ecology describes them in this chapter qualitatively, indicating they are positive and nonzero, but not applying a quantitative estimate.

4.2 Likely benefits of the rule amendments

Ecology expects the proposed amendments to result in the following benefits. The changes in rule language and requirements that lead to these benefits are discussed in Chapter 2 of this document.

Housekeeping amendments increase the readability and understanding of the requirements of the rule.

The transportation based exemptions added as a result of input from the transportation advisory committee eliminate duplicative SEPA review.

Chapter 5: Cost-Benefit Comparison and Conclusions

5.1 Introduction

As discussed in Chapter 1, the Washington Administrative Procedure Act (RCW 35.05.328) requires Ecology to evaluate significant legislative rules to “[d]etermine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.”

5.2 Expected costs

As described in Chapter 3, Ecology determined there were no likely costs associated with the rule amendments.

5.3 Expected benefits

As described in Chapter 4, Ecology expects the following benefits associated with the rule amendments:

- Housekeeping amendments increase the readability and understanding of the requirements of the rule.
- The transportation based exemptions added as a result of input from the transportation advisory committee eliminate duplicative SEPA review.

5.4 Final comments and conclusion

Based on assessment of the likely costs and benefits, Ecology concludes that the likely benefits of the rule amendments exceed their costs. There are zero costs expected, and positive benefits expected.

Chapter 6: Least Burdensome Alternative Analysis

6.1 Introduction

RCW 34.05.328(1)(d) requires Ecology to “...[d]etermine, after considering alternative versions of the rule and the analysis required under (b) and (c) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection.”

Ecology assessed alternatives to the rule amendments, and determined whether they met the general goals and specific objectives of the authorizing statute. Of those that would meet these objectives, Ecology determined whether the rule amendments were the least burdensome.

6.2 General goals and specific objectives of the authorizing statutes

In 2012, the Legislature directed Ecology to review and update all exemptions listed in WAC 197-11-800 (among other activities). In Section 301 of Chapter 1, Laws of 2012 1st Special Session (2ESSB 6406), specific direction is given to streamline regulatory processes and achieve program efficiencies. In 2015, HB 1851 directed Ecology to conduct rulemaking on structurally deficient bridges for cities, towns, and counties. Additionally, SB 5994 directed WSDOT to look at SEPA and the regulatory process in connection with transportation related SEPA exemptions.

The intent of the rule changes is to provide exemptions for projects where duplicative SEPA review would have resulted, and to exempt review for projects that historically have not been associated with environmental impacts.

Because the proposed amendments increase exemptions and eliminate SEPA review costs, there are no costs of compliance associated with the proposed changes. By definition the proposed amendments are the least burdensome for those required to comply with the rule.

The following sections summarize alternative rule content considered during this rulemaking, and why they were not included in the final rule.

6.3 Only doing housekeeping

Ecology considered only doing housekeeping amendments with the current proposed rule. This would not be consistent with HB 1851, as it would not address mandated exemptions for structurally deficient bridges for cities, towns, and counties.

6.4 Delaying transportation related exemptions

Ecology considered restricting the current proposed rulemaking to housekeeping and exempting structurally deficient bridges for cities, towns, and counties. This would leave changes necessary due to SB5994 for a later rulemaking. While this would not impact the burden placed on entities covered by SEPA, it would duplicate effort for Ecology.

6.5 Conclusion

Based on research and analysis required by RCW 34.05.328(d)(e) the Department of Ecology determines:

There is sufficient evidence, discussed above, that the proposed rule is the least burdensome version of the rule, for those who are required to comply, given the goals and objectives of the law for Ecology to adopt the proposed rule.

Works Cited

WA State. (2013). *2ESSB 6406: Modifying programs that provide for the protection of the state's natural resources.*

WA State. (2012). *Chapter 173-11 WAC: State Environmental Policy Act.*

WA State. (2011). *RCW 34.05: Administrative Procedures Act.*

WA State. (1971). *State Environmental Policy Act (SEPA); RCW 43.21C.*

WA State (2015) HB1851 <http://lawfilesexternal.leg.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/House/1851-S.SL.pdf>

WA State (2015) SB5994 <http://lawfilesexternal.leg.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/Senate/5994-S.SL.pdf>