



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: October 19, 2022

TIME: 8:59 AM

WSR 22-21-138

Agency: Department of Ecology AO #22-08

Title of rule and other identifying information: (describe subject) The Washington State Department of Ecology is conducting expedited rulemaking at the direction of the Washington legislature to amend Chapter 197-11 WAC, SEPA Rules. This rulemaking will incorporate amendments and new language in Chapter 43.21C RCW, State Environmental Policy Act (SEPA) and amends other sections of the rule to align with legislative directives.

Ecology is amending and adding new language the following sections of Chapter 197-11 WAC:

- WAC 197-11-800(1)(b)(c) and (d) - *Minor new construction - Flexible thresholds*
- WAC 197-11-444(2)(c) - *Elements of the Environment*
- WAC 197-11-960 - *Environmental Checklist*
- WAC 197-11-172(1)(b) - *Planned actions - Project review*
- WAC 197-11-164(1)(b) - *Planned actions - Definition and criteria*

The majority of these changes reflect legislative directives in SSB 5818, Housing Construction – State Environmental Policy Act and Growth Management Act, Chapter 246, 2022 laws of the regular session to be completed by December 2022. Other changes align the rule with state statute and fulfill past legislative directives.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The scope of the SEPA rule amendments and new language in Chapter 197-11 WAC incorporate language directly from SEPA statute, Chapter 43.21C RCW.

We are making the following state SEPA rule changes:

- Creating a new categorical exemption level for single-family home construction for cities and towns fully planning under GMA in RCW 36.70A.040;
- Including four attached single-family residential units in WAC 197-11-800 (1)(b)(i);
- Incorporating new procedural standards for raising categorical exemption levels in WAC 197-11-800 that require outreach to the Washington State Department of Transportation;
- Removing parking as a required consideration for analyzing traffic impacts for proposals;
- Updating planned actions, WAC 197-11-164, to be consistent with state SEPA law, Chapter 43.21C RCW; and
- Fixing typographical errors in the title of WAC 197-11-800.

Chapter 246, 2022 laws of the regular session, directs Ecology to complete expedited rule making by Dec. 31, 2022. The scope of the rule amendments remedy legislative directives dating back to the 2017 legislative session and addresses inconsistencies with SEPA (Chapter 43.21C RCW).

Reasons supporting proposal: The proposed amendments create consistency between SEPA and the SEPA Rule to ensure the SEPA Rule remains relevant and a dependable source of information.

Statutory authority for adoption: RCW 43.21C.110, State Environmental Policy Act

Statute being implemented: RCW 43.21110; RCW 43.21C.440; Chapter 246, 2022 Laws of regular session; and, Chapter 173, 2020 Laws of regular session.

Is rule necessary because of a:

- Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Name of proponent: (person or organization) Department of Ecology

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Sarah Cassal	300 Desmond Drive, Lacey, WA 98503	360-688-6374
Implementation:	Sarah Cassal	300 Desmond Drive, Lacey, WA 98503	360-688-6374
Enforcement:	N/A		

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: The legislative mandate to complete expedited rulemaking and the changes made to WAC 197-11-800(1), WAC 197-11-444, and WAC 197-11-960 are not codified into Chapter 43.21C RCW. These legislative are found in the above cited Session laws.

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
 Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
 Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
 Content is explicitly and specifically dictated by statute;
 Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
 Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
 The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
 The rule is no longer necessary because of changed circumstances; or
 Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.


Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): Chapter 246, Laws of 2022 regular session (SSB 5818) directs Ecology to complete expedited rule making by December 31, 2022. The changes in the proposed rule amendment are for consistency with the statute and fix typographical errors. This meets the criteria for the expedited process found in RCW 34.05.353(1)(a),(b) and (d).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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AND RECEIVED BY (date) December 19, 2022

Date: 10/19/2022	Signature: 
Name: Heather Bartlett	
Title: Deputy Director	