



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

# **Final Cost-Benefit and Least Burdensome Alternative Analyses**

*Chapter 197-11 WAC*

*SEPA Rules (State Environmental Policy Act)*

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# **Final Cost-Benefit and Least Burdensome Alternative Analyses**

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

By

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# Executive Summary

This report reviews the economic analyses performed by the Washington State Department of Ecology (Ecology) to estimate the incremental expected benefits and costs of the amendments to the SEPA Rules (State Environmental Policy Act, “SEPA”; Chapter 197-11 WAC). 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.”

In Section 301 of Chapter 1, Laws of 2012 1<sup>st</sup> Special Session (2ESSB 6406), the Legislature directed the Department of Ecology to update the SEPA rules. The legislation directed Ecology to update the SEPA rules to help streamline regulatory processes and achieve program efficiencies. These updates shall also maintain current levels of natural resource protection.

As directed by the legislature, this rule making is focused on the following specific topics:

- Increasing the flexible thresholds that local governments may adopt to exempt minor new construction projects from SEPA review.
- Establishing separate flexible exemption thresholds for local governments in counties fully planning under RCW 36.70A.040 and local governments in other counties.
- Revising the process that local governments follow in adopting flexible SEPA minor new construction exemption thresholds.
- Revising and clarifying language related to the “residential”, “parking lot” and “landfill and excavation” categories of minor new construction.
- Increasing the exemption threshold for SEPA review of electric facilities.
- Adding flexibility for all lead agencies to improve the efficiency of the environmental checklist. This includes allowing for electronic submittal of the environmental checklist, including electronic signature.

Ecology determined there were no likely costs associated with the rule amendments.

Ecology expects the following benefits associated with the rule amendments.

- Avoided costs of submitting new and changed ordinance language.
- Avoided duplicative SEPA costs, through higher exemption thresholds for minor construction.
- Avoided duplicative SEPA costs, through higher electrical facility thresholds.
- Avoided duplicative SEPA costs, through environmental checklist adjustments.
- Avoided costs of non-electronic checklist submittal in some cases.
- Avoided duplicative SEPA costs, through avoided checklist sections for ordinances.

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 concluded that the rule amendments are the least burdensome of those alternatives that satisfy the goals and objectives of the authorizing statute. First, this is because

viable alternatives considered would be more burdensome. Second, this is because the rule amendments do not impose additional burden.

# **CHAPTER 1: Background and Introduction**

## **1.1 Introduction**

This report reviews the economic analyses performed by the Washington State Department of Ecology (Ecology) to estimate the incremental expected benefits and costs of the amendments to the SEPA Rules (State Environmental Policy Act, “SEPA”; Chapter 197-11 WAC). This document is generally intended for use with an associated Least Burdensome Alternative Analysis (LBA; see Chapter 6) to develop an understanding of the full 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.

### **1.1.1 What is SEPA?**

Washington’s State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW), requires that all state and local agencies consider the likely consequences before making decisions that affect the natural and built environment. The law provides broad authority for agency decision-makers to avoid, mitigate or compensate for adverse impacts by modifying proposals or denying permits.

### **1.1.2 Background**

All state and local public agencies implement SEPA using the provisions in Chapter 43.21C RCW and statewide rules adopted in Chapter 197-11 Washington Administrative Code (WAC). SEPA covers a very wide range of actions, both project and “non-project” (such as plan and code adoption). Cities and counties are responsible for over 75% of SEPA reviews.

SEPA provides a way to identify possible environmental impacts that may result from governmental decisions. These decisions may be related to issuing permits for private projects; constructing public facilities; or adopting regulations, policies or plans.

Information provided during the SEPA review process helps agency decision-makers, applicants, and the public understand how a proposal will affect the environment. This information can be used to change a proposal to reduce likely impacts, or to condition or deny a proposal when adverse environmental impacts are identified.

## **1.2 Description of the rule amendments**

The rule amendments include changes to three topics as specified in 2012 legislation:

- Minor new construction optional thresholds: Increase optional SEPA thresholds that local governments may adopt for specified types of minor new construction.
  - A new “multi-family” category for thresholds (as specified in law) distinct from “single-family”, but at same threshold as baseline. No change in SEPA threshold.
  - Merging previous parking lot language with commercial use types. No change in SEPA threshold.
  - Clarifying to ensure consistency with rule language on grading and filling. No change in SEPA threshold.
  - Deleting requirement that local governments must submit adopted local SEPA ordinance revisions to Ecology.
  - Raising or maintaining of previous SEPA thresholds available to local governments.
  - Procedural requirements for adopting an ordinance or resolution enacting optional higher SEPA thresholds for minor construction:
    - Documentation of the other regulations that ensure protection of the environment.
    - Description of public notification provided through other local planning processes for the exempted projects.
    - Notice of the proposal to affected tribes, agencies with expertise, Ecology, and the public.
- Electrical facility thresholds:
  - Increasing SEPA thresholds by:
    - Updating technology-based SEPA threshold for electrical lines to 115 thousand volts, from the baseline 55 thousand volts.
    - Allowing modern electrical line installation without SEPA review for existing rights-of-way and developed utility corridors.
  - Maintaining baseline SEPA review for new 115 thousand volt cross-country lines.
  - Clarifying the exemption for overbuilding transmission lines on existing distribution lines by decreasing the SEPA threshold to match technical practice and feasibility.
- Environmental checklist: Updating the environmental checklist:
  - Allowing lead agencies to identify in the checklist “a locally adopted ordinance, development regulation, land use plan, or other legal authority” that addresses impacts from a proposal on a particular element of the natural or built environment.
  - Expressly allowing electronic submittal, including electronic signature.
  - Deleting provision that precludes “altering” questions on the checklist.
  - Exempting non-project proposals (e.g., plan or ordinance adoption) from completing the full environmental checklist (beyond the SEPA supplemental nonpoint proposal questions) when it is not useful to analysis of a proposal.

## 1.3 Reasons for the rule amendments

In Section 301 of Chapter 1, Laws of 2012 1<sup>st</sup> Special Session (2ESSB 6406), the Legislature directed the Department of Ecology to update the SEPA rules. The legislation directed Ecology to update the SEPA rules to help streamline regulatory processes and achieve program efficiencies. These updates, as also directed by the legislation, shall maintain current levels of natural resource protection. The rule-based categorical exemptions for SEPA review in WAC 197-11-800 need reviewing in light of the increased environmental protections in place under chapters 36.70A and 90.58 RCW, and other laws.

As directed by the legislature, this rule making is focused on the following specific topics:

- Increasing the flexible thresholds that local governments may adopt to exempt minor new construction projects from SEPA review.
- Establishing separate flexible exemption thresholds for local governments in counties fully planning under RCW 36.70A.040 and local governments in other counties.
- Revising the process that local governments follow in adopting flexible SEPA minor new construction exemption thresholds.
- Revising and clarifying language related to the “residential”, “parking lot” and “landfill and excavation” categories of minor new construction.
- Increasing the exemption threshold for SEPA review of electric facilities.
- Adding flexibility for all lead agencies to improve the efficiency of the environmental checklist. This includes allowing for electronic submittal of the environmental checklist, including electronic signature.

The 2012 legislation directed Ecology to complete this rule making by December 31, 2012. The legislation also directed Ecology to follow this initial rule making with a more comprehensive update to the SEPA rules with amendments to be completed by December 31, 2013.

## 1.4 Document organization

Ecology organized this document into the following sections:

- [Baseline and rule amendments \(Chapter 2\)](#): Description and comparison of the baseline requirements in state and federal laws and rules to the rule amendments.
- [Likely costs of the rule amendments \(Chapter 3\)](#): Analysis of the types and size of any costs Ecology expects the rule amendments to create. For the rule amendments, Ecology does not expect any costs to be generated.
- [Likely benefits of the rule amendments \(Chapter 4\)](#): Analysis of the types and size of benefits expected to result from the rule amendments.
- [Cost-benefit comparison and conclusions \(Chapter 5\)](#): Discussion of the complete implications of the Cost-Benefit Analysis.
- [Least Burdensome Alternative Analysis \(Chapter 6\)](#): Analysis of considered alternatives to the rule amendments.

# **CHAPTER 2: Baseline and Rule Amendments**

## **2.1 Introduction**

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

In this chapter, Ecology also describes the 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 analysis, and indicates which cost and benefit analyses are discussed in chapters 3 and 4 of this document.

## **2.2 Baseline**

For this rulemaking, the baseline is the previous SEPA Rules (Chapter 197-11 WAC), as well as other state and federal requirements that overlap with SEPA requirements. These are addressed in each change and the impact is described in section 2.4 of this document.

## **2.3 Analytic scope**

It is often the case that there is a legal requirement prompting Ecology rulemaking (in that the law requires a rule to be able to implement it, or to make changes to previous rules) that is not entirely separable from the rule requirements. In the case of this rulemaking, the law (Chapter 1, Laws of 2012 1<sup>st</sup> Special Session; 2ESSB 6406, Section 301) directs Ecology to update the SEPA rules to modernize it and reduce redundant burden, “in light of the increased environmental protections in place under chapters 36.70A and 90.58 RCW, and other laws.”. The law’s general directive is to make amendments to the rules that will make them more efficient in the broader regulatory context, but it does not set out specific requirements; the rulemaking will determine the specific requirements. Therefore, the impacts of the rule amendments are partially due to the directives of the law, but those are not separable from the rule amendments’ specific requirements.

Ecology has, therefore, analyzed the impacts (for any costs and benefits) of the rule amendments as if the amendments were solely based on Ecology’s discretion in the rulemaking, although some inseparable portion was due to the authorizing law’s directives. This does not impact the overall assessment of the rule amendments.

## **2.4 Analyzed changes**

Ecology analyzed the impacts of the following changes to the SEPA Rules over which it exercised discretion. 2012 legislation directed that the agency pursue rulemaking for the three topics below. Each change is discussed further in its own subsection, below.

- Minor new construction optional thresholds: Increase optional SEPA thresholds that local governments may adopt for specified types of minor new construction.
- A new “multi-family” category for thresholds (as directed in law) distinct from “single-family”, but at same threshold as baseline. No change in SEPA threshold.

- Merging previous parking lot language with commercial use types. No change in SEPA threshold.
- Clarifying landfill language to ensure consistency with WAC language on grading and filling. No change in SEPA threshold.
- Deleting requirement that local governments must submit adopted local SEPA ordinance revisions to Ecology.
- Raising or maintenance of previous SEPA thresholds available to local governments.
- Procedural requirements for adopting an ordinance or resolution enacting optional higher SEPA thresholds for minor construction:
  - Documentation of the other regulations that ensure protection of the environment.
  - Description of public notification provided through other local planning processes for the exempted projects.
  - Notice of the proposal to affected tribes, agencies with expertise, Ecology, and the public.
- Electrical facility thresholds:
  - Increasing SEPA thresholds by:
    - Updating technology-based SEPA threshold for electrical lines to 115 thousand volts, from the baseline 55 thousand volts.
    - Allowing modern electrical line installation without SEPA review for existing rights-of-way and developed utility corridors.
  - Maintaining baseline SEPA review for new 115 thousand volt cross-country lines.
  - Clarifying exemption for overbuilding transmission lines on existing distribution lines by decreasing the SEPA threshold to match technical feasibility and practice.
- Environmental checklist: Improve efficiency of the environmental checklist):
  - Allowing lead agencies to identify in the checklist “a locally adopted ordinance, development regulation, land use plan, or other legal authority” that addresses impacts from a proposal on a particular element of the natural or built environment.
  - Expressly allowing electronic submittal, including electronic signature.
  - Deleting provision that precludes “altering” questions on the checklist.
  - Exempting non-project proposals (e.g., plan or ordinance adoption) from completing the full environmental checklist (beyond the SEPA supplemental nonpoint proposal questions) when it is not useful to analysis of a proposal.

### **2.4.1 “Multi-family” category**

The law broadly directs Ecology to use a new “multi-family” category in SEPA.

- Baseline: SEPA uses a “residential” category that includes both single and multi family homes.
- Adopted: Separate the “residential” category into “single-family” and “multi-family”.
- Impact: None. While the category is subdivided, the minimum thresholds do not change for either type of housing.

## **2.4.2 Parking lots**

Ecology is merging previous parking lot language in the rule with other previous language on commercial use types.

- Baseline: Rule language on parking lots is separate from language on commercial use types.
- Adopted: Merging language into one location in the rule.
- Impact: None. There are no changes to requirements; they are just changing location in the rule language.

## **2.4.3 Landfilling and excavation**

Ecology is clarifying language on landfilling and excavation.

- Baseline: Certain landfilling is exempt from SEPA regulation as part of a project, while others are exempt as stand-alone projects.
- Adopted: Cross reference the language in the SEPA rule to reflect the various ways landfilling can be exempt.
- Impact: None. There is no change in regulatory requirements; the added language references previous language elsewhere in the rule.

## **2.4.4 Submitting ordinance language**

Ecology is deleting a requirement to submit adopted SEPA ordinances to Ecology.

- Baseline: Local governments must submit new or changed SEPA ordinances to Ecology.
- Adopted: Local governments are not required to submit new or changed ordinances to Ecology.
- Impact: Benefit. Local governments save the effort and money required to submit every new or changed local SEPA ordinance to Ecology. (Under current practice Ecology only used the submitted copies for informational purposes. There is no cost of information lost because local ordinances are available electronically via the internet. This is why Ecology is changing the requirement; it is a pure benefit.)

## **2.4.5 Maximum minor construction thresholds**

Ecology is raising some maximum minor construction thresholds.

- Baseline: Local governments may raise SEPA thresholds up to:
  - 20 dwelling units for residential homes.
  - 30 thousand square feet for barns, sheds, and other agricultural buildings.
  - 12 thousand square feet for office, school, commercial, recreational, service, or storage buildings.
  - 40 automobiles for parking lots.
  - 500 cubic yards for stand-alone landfills or excavations.
- Adopted: Maintaining or increasing thresholds up to:

Project Types	Fully Planning GMA Counties		All other counties
	Incorporated and unincorporated UGA	Other unincorporated areas	Incorporated and unincorporated areas
Single family residential	30 units	20 units	20 units
Multifamily residential	60 units	25 units	25 units
Barn, loafing shed, farm equipment storage, produce storage or packing structure	40,000 square feet	40,000 square feet	40,000 square feet
Office, school, commercial, recreational, service or storage building	30,000 square feet and 90 parking spaces	12,000 square feet and 40 parking spaces	12,000 square feet and 40 parking spaces
Landfill or excavation	1,000 cubic yards	1,000 cubic yards	1,000 cubic yards

- Impact: Benefit. None of the exemption thresholds for SEPA for any category (including residential units after being subdivided into single-family and multi-family units) goes down. Thresholds either stay the same or go up, maintaining or reducing previous regulatory burden. The exemptions that fall under the new thresholds are for projects reviewed by existing planning processes other than SEPA, including comprehensive planning and adoption of development regulations.

## 2.4.6 Procedural requirements for adopting flexible thresholds

Ecology is clarifying documentation and notification requirements for cities and counties that propose the adoption of flexible thresholds for minor construction.

- Baseline: A newly established exempt level “shall be supported by local conditions, including zoning or other land use plans or regulations.” There is no specific requirement for notification under SEPA prior to adopting these thresholds into the local SEPA ordinance, as SEPA ordinance adoption is categorically exempt from SEPA. Notice is provided following the local government’s procedures related to council or commission actions.
- Adopted:
  - Local governments that propose to adopt flexible thresholds for minor construction must:
    - i. Document the other regulations that ensure protection of the environment.
    - ii. Describe the public notification provided through other local planning processes for the exempted projects.
    - iii. Provide at least 21 days notice of the proposed flexible thresholds to affected tribes, agencies with expertise, Ecology, and the public.
- Impact: On the whole, there is reduced cost for notification and other procedures for the exempted projects. Entities taking advantage of the flexible threshold

option will experience a net cost savings when accounting for reduced SEPA requirements for multiple minor construction projects.

## **2.4.7 Electrical facility thresholds**

Ecology is increasing SEPA thresholds for electric facilities, to reflect modern technology.

- **Baseline:** The previous SEPA review exemption threshold for electric facilities, lines, equipment or appurtenances, not including substations, is 55 thousand volts or less.
- **Adopted:** Higher threshold for SEPA review exemption of 115 thousand volts or less for electric facilities, lines, equipment or appurtenances, not including substations, installed in existing rights of way and developed utility corridors.
- **Impact:** None or benefit. Modern electrical lines are 115 thousand volts. Installation of lines less than or equal to this voltage within existing utility corridors will not trigger SEPA review, and does not differ from the baseline. New 115 thousand volt lines through other areas would still be subject to SEPA review.

Ecology is clarifying the exemption for overbuilding transmission lines on existing distribution lines, by reducing the SEPA threshold to match technical feasibility and practice.

- **Baseline:** The previous SEPA review exemption threshold for overbuilding a transmission line on an existing distribution line is for any transmission line greater than 55 thousand volts.
- **Adopted:** Lower threshold for SEPA review exemption when overbuilding a transmission line on an existing distribution line. The transmission line must be less than or equal to 115 thousand volts.
- **Impact:** None. Ecology does not expect any costs associated with this change, because Ecology estimates zero projects in the next 20 years that will overbuild a transmission line greater than 115 thousand volts on an existing distribution line.

Ecology makes this assumption based on historical overbuilding projects and consultation with utility industry experts. Current practices and engineering limitations prevent overbuilding transmission lines greater than 115 thousand volts on existing distribution lines (e.g., installing taller wooden poles that carry 115 thousand volt transmission lines above existing distribution lines). Transmission lines carrying greater than 115 thousand volts would require a different type of pole (e.g., a large metal pole replacing existing wooden distribution poles, which is not classified as overbuilding on an existing distribution line, but is a new project subject to SEPA).

## **2.4.8 Environmental checklist – duplicative requirements**

Ecology is allowing lead agencies to identify in the environmental checklist other regulations or authority that address environmental impacts from their proposal.

- **Baseline:** The previous checklist does not expressly allow for identification of relevant development review requirements in the checklist.
- **Adopted:** Allow lead agencies to identify in the checklist “a locally adopted ordinance, development regulation, land use plan, or other legal authority” that addresses impacts from a proposal on a particular element of the natural or built environment.
- **Impact: Benefit.** Lead agencies will avoid duplicative documentation and analysis of impacts otherwise covered by both SEPA and other requirements.

#### **2.4.9 Environmental checklist – electronic submittal**

Ecology is allowing lead agencies to submit environmental checklists electronically, as directed by RCW 43.17.095 for state agencies. Ecology is clarifying language to indicate that lead agencies may use electronic submittal if they choose, though there is no previous prohibition.

- **Baseline:** There is no explicit allowance to submit environmental checklists electronically, but RCW 43.17.095 requires state agencies to accept documents electronically.
- **Adopted:** Explicitly allow electronic submittal of environmental checklists.
- **Impact:** No change, or benefit from explicit allowance. Some environmental checklists may currently be submitted electronically, and there is no previous prohibition of electronic submittal. Explicit allowance of electronic submittal may encourage lead agencies that might be unsure under the baseline to reduce submission costs (transit, mailing, etc.). Those already submitting electronically would experience no change.

#### **2.4.10 Environmental checklist – “altering” questions**

Ecology is deleting the provision that prohibits “altering” questions on the checklist.

- **Baseline:** Agencies are not allowed to alter questions on the environmental checklist.
- **Adopted:** Allow agencies to alter questions to account for duplicative or irrelevant topics or requirements.
- **Impact:** No change or benefit. Some would continue to complete the checklist as under the baseline. Others would benefit (and there may be informational benefits) from answering questions that are more appropriately suited to their projects.

#### **2.4.11 Environmental checklist – non-project proposals**

Ecology is exempting non-project proposals from parts of the checklist.

- **Baseline:** All types of proposals must complete the entire environmental checklist.
- **Adopted:** Exempt non-project proposals (e.g., plan or ordinance adoption) from completing the full environmental checklist (beyond the SEPA supplemental nonpoint proposal questions) when completing the full checklist is not useful to analysis of a proposal.

- Impact: Benefit. Those with non-project proposals will avoid unnecessary effort in completing irrelevant parts of the environmental checklist.

# **CHAPTER 3: Likely Costs of Rule Amendments**

## **3.1 Introduction**

Ecology estimated the expected costs associated with the rule amendments to the SEPA rule, 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 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).

There is one amendment that decreases a previous threshold for review, when overbuilding transmission lines on existing distribution lines. As explained in section 2.4.7 Electrical facility thresholds, Ecology does not expect this change to create additional costs.

Ecology reduced compliance burden only where other existing regulation required sufficiently similar compliance tasks (another law or rule requiring a review), where information would not be lost at higher thresholds, or where required compliance task documentation on the checklist were irrelevant to the proposed action (e.g., local government ordinances that did not have the attributes of a project, and therefore created no information or benefit by completing the project-related SEPA checklist items or questions).

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 Benefits of the rule amendments**

Ecology expects the 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.

### **4.2.1 Submitting ordinance language**

Local governments save the effort and money required to submit every new or changed local SEPA ordinance to Ecology. (Under current practice Ecology only used the submitted copies for informational purposes. There is no cost of information lost because local ordinances are available electronically via the internet. This is why Ecology is changing the requirement; it is a pure benefit.)

### **4.2.2 Flexible minor construction thresholds**

None of the flexible exemption thresholds for SEPA for any category (including residential units after being subdivided into single-family and multi-family units) goes down. Thresholds either stay the same or go up, maintaining or reducing previous regulatory burden. The exemptions that fall under the new thresholds are reviewed by existing planning processes.

### **4.2.3 Electrical facility thresholds**

Some modern electrical lines are 115 thousand volts. Installation of these lines in existing rights-of-way and developed utility corridors will not trigger SEPA review. (New 115 thousand volt lines through other areas would still be subject to SEPA review.) This represents a cost-savings for utilities installing lines in existing rights-of-way, in which past SEPA review has been completed.

### **4.2.4 Environmental checklist – duplicative requirements**

Lead agencies will avoid duplicative documentation and analysis of impacts otherwise covered by both SEPA and other requirements.

#### **4.2.5 Environmental checklist – electronic submittal**

Some environmental checklists may currently be submitted electronically, and there is no previous prohibition of electronic submittal. Explicit allowance of electronic submittal may encourage lead agencies that might be unsure under the baseline to reduce submission costs (transit, mailing, etc.) by using electronic submittal. Those already submitting electronically would experience no change.

#### **4.2.6 Environmental checklist – “altering” questions**

Some project applicants would continue to complete the checklist as under the baseline. Others would benefit (and there may be informational benefits) from answering questions that are more appropriately suited to their projects.

#### **4.2.7 Environmental checklist – non-project proposals**

Those with non-project proposals will avoid unnecessary effort in completing irrelevant parts of the environmental checklist.

# **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.

- Avoided costs of submitting new and changed ordinance language.
- Avoided duplicative SEPA costs, through higher exemption thresholds for minor construction.
- Avoided duplicative SEPA costs, through higher electrical facility thresholds.
- Avoided duplicative SEPA costs, through environmental checklist adjustments.
- Avoided costs of non-electronic checklist submittal in some cases.
- Avoided duplicative SEPA costs, through avoided checklist sections for ordinances.

## **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.”<sup>1</sup>

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 Authorizing statute

The authorizing statute is Chapter 1, Laws of 2012 1<sup>st</sup> Special Session (2ESSB 6406, Section 301). As directed by the legislature, this rule making is focused on the following specific topics:

- Increasing the flexible thresholds that local governments may adopt to exempt minor new construction projects from SEPA review.
- Establishing separate flexible exemption thresholds for local governments in counties fully planning under RCW 36.70A.040 and local governments in other counties.
- Revising the process that local governments follow in adopting flexible SEPA minor new construction exemption thresholds.
- Revising and clarifying language related to the “residential”, “parking lot” and “landfill and excavation” categories of minor new construction.
- Increasing the exemption threshold for SEPA review of electric facilities.
- Adding flexibility for all lead agencies to improve the efficiency of the environmental checklist. This includes allowing for electronic submittal of the environmental checklist, including electronic signature.

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

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<sup>1</sup> Here, the referenced subsections are:

- (a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements.
- (b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule.
- (c) Provide notification in the notice of proposed rulemaking under RCW [34.05.320](#) that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW [34.05.340](#), the supplemental notice must include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis must be available when the rule is adopted under RCW [34.05.360](#).

## **6.3 Two-tiered framework for minor construction**

Ecology considered:

- Establishing a two-tiered framework for flexible thresholds regarding minor construction, and leaving the current flexible threshold levels and their adoption procedures in place; and
- Adopting a new set of higher flexible thresholds with new more complex procedural requirements.

These approaches were provided for comment to the advisory committee and other parties. Ecology decided that these approaches would have thwarted implementation of flexible SEPA thresholds, as the proposed procedure was too complex and burdensome for local governments and other interested parties.

## **6.4 Continuing public notice under SEPA**

Ecology considered requiring projects exempted under flexible minor construction thresholds to continue providing public notice under SEPA (but not require other components of SEPA review). This concept included continued notice to the SEPA register. Ecology decided that requiring a new type of public notice for these locally-exempted projects was not warranted, as this would have been burdensome and confusing without substantial benefit to interested parties. Instead, under the rule a local government must include in their adopting ordinance identification of the non-SEPA public notice that will otherwise continue to apply to the exempted projects.

## **6.5 Increasing minimum exemption threshold sizes**

Ecology considered increasing the minimum exemption threshold sizes as well as the maximum thresholds. Ecology decided not to include this change because this would impose additional burden on local agencies to change their SEPA policies to match the new minimum threshold sizes if they are currently using the minimum exemption levels.

## **6.6 Conclusion**

Ecology concluded that the rule amendments are the least burdensome of those alternatives that satisfy the goals and objectives of the authorizing statute. First, this is because viable alternatives considered would be more burdensome. Second, this is because the rule amendments do not impose additional burden.