WSR 24-15-006
EXPEDITED RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed July 3, 2024, 5:31 p.m.]

Title of Rule and Other Identifying Information: Military spouses; removing barriers to temporary practice permits. The dental quality assurance commission is proposing amendments to WAC 246-817-187 Temporary practice permit—Military spouse eligibility and issuance, to update language changes made by 2SHB 1009 (chapter 165, Laws of 2023).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 2SHB 1009 alters temporary practice permit requirements to expedite the issuance of professional licenses for military spouses who hold a license in another state by removing the need to first leave employment.

The proposed rule amendment aligns WAC 246-817-187 by striking language from the rule to match the changes made by 2SHB 1009 and codified in RCW 18.340.020.

Reasons Supporting Proposal: The proposed changes will align the rules with statutory changes regarding licensure of military spouses who hold a license in another state.

Statutory Authority for Adoption: 2SHB 1009 (chapter 165, Laws of 2023), codified as RCW 18.340.020.

Statute Being Implemented: RCW 18.340.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Debbie Gardner, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4893.

This notice meets the following criteria to use the expedited adoption process for these rules:

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed amendments align WAC 246-817-187 with the statutory language in RCW 18.340.020.

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 Debbie Gardner, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4893, fax 360-236-2901, email https://fortress.wa.gov/doh/policyreview, AND RECEIVED BY September 23, 2024, at midnight.

June 24, 2024
Bryan Swanson, DDS, Chair
Dental Quality Assurance Commission

OTS-5492.1

AMENDATORY SECTION (Amending WSR 15-11-005, filed 5/7/15, effective 6/7/15)

WAC 246-817-187 Temporary practice permit—Military spouse eligibility and issuance. A military spouse or state registered domestic partner of a military person may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for the profession. This section applies to dentists licensed in chapter 18.32 RCW, expanded function dental auxiliaries licensed and dental assistants registered in chapter 18.260 RCW, and dental anesthesia assistants certified in chapter 18.350 RCW.

(1) A temporary practice permit may be issued to an applicant who is a military spouse or state registered domestic partner of a military person and:

(a) Is moving to Washington as a result of the military person's transfer to Washington;

(b) ((~~Left employment in another state to accompany the military person to Washington;~~

~~(c)~~)) Holds an unrestricted, active credential in another state that has substantially equivalent credentialing standards for the same profession to those in Washington; and

((~~(d)~~)) (c) Is not subject to any pending investigation, charges, or disciplinary action by the regulatory body of the other state or states.

(2) A temporary practice permit grants the individual the full scope of practice for the profession.

(3) A temporary practice permit expires when any one of the following occurs:

(a) The credential is granted;

(b) A notice of decision on the application is mailed to the applicant, unless the notice of decision on the application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), fingerprint card if required, and documentation for the credential;

(b) ((~~Attest on the application that the applicant left employment in another state to accompany the military person;~~

~~(c)~~)) Meet all requirements and qualifications for the credential that are specific to the training, education, and practice standards for the profession;

((~~(d)~~)) (c) Provide verification of having an active unrestricted credential in the same profession from another state that has substantially equivalent credentialing standards for the profession in Washington;

((~~(e)~~)) (d) Submit a copy of the military person's orders and a copy of:

(i) The military-issued identification card showing the military person's information and the applicant's relationship to the military person;

(ii) A marriage license; or

(iii) A state registered domestic partnership; and

((~~(f)~~)) (e) Submit a written request for a temporary practice permit.

(5) For the purposes of this section:

(a) "Military person" means a person serving in the United States armed forces, the United States public health service commissioned corps, or the merchant marine of the United States.

(b) "Military spouse" means the husband, wife, or registered domestic partner of a military person.

WSR 24-15-014
EXPEDITED RULES
DEPARTMENT OF AGRICULTURE
[Filed July 8, 2024, 1:32 p.m.]

Title of Rule and Other Identifying Information: WAC 16-390-240 USDA audit verification and terminal market inspection fees.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of agriculture (department) is proposing to amend WAC 16-390-240 USDA audit verification and terminal market inspection fees, to adopt fees identical to, and not less than, fees adopted by the United States Department of Agriculture, Agricultural Marketing Service (USDA-AMS) as published in the Federal Register (Vol. 89, No. 88) on May 6, 2024, under the "Fresh Fruits, Vegetables, and Other Products (Inspection, Certification, and Standards)" table with an effective date of October 1, 2024. These changes are necessary to comply with the department's cooperative agreement with USDA-AMS for services the department provides as a "Federal-State Inspection Agency."

Reasons Supporting Proposal: The proposed fee amendments incorporate recent changes in the applicable USDA-AMS audit verification and terminal market inspection fees as required under the department's cooperative agreement with USDA-AMS.

Statutory Authority for Adoption: RCW 15.17.030, [15.17].140(2), [15.17].150, and [15.17].270.

Statute Being Implemented: RCW 15.17.150 and [15.17].270.

Rule is necessary because of federal law, 7 C.F.R. Part 51.

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Timothy Estes, 1111 Washington Street S.E., Olympia, WA 98504, 360-485-1242; Implementation: Robert Newell, 21 North First Avenue, Suite 226, Yakima, WA 98902, 509-952-6737; and Enforcement: Jessica Allenton, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1828.

This notice meets the following criteria to use the expedited adoption process for these rules:

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.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The department performs audit verification and terminal market inspection services requested by customers as a "Federal-State Inspection Agency" under a Cooperative Agreement with USDA-AMS. Under the cooperative agreement, the department is required to charge no less than USDA-AMS when conducting audit inspection and terminal market inspection services. The proposed rule amendments adopt the updated USDA-AMS fees that go into effect October 1, 2024.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEAR-

INGS, 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 Gloriann Robinson, Rules Coordinator, Department of Agriculture, 1111 Washington Street S.E., Olympia, WA 98504, phone 360-902-1802, fax 360-902-2092, email wsdarulescomments@agr.wa.gov, AND RECEIVED BY September 23, 2024.

July 8, 2024
Jessica Allenton
Assistant Director

OTS-5540.1

AMENDATORY SECTION (Amending WSR 23-18-028, filed 8/28/23, effective 10/1/23)

WAC 16-390-240 USDA audit verification and terminal market inspection fees. WSDA performs audit and inspection services requested by customers under a "cooperative agreement" with the United States Department of Agriculture's Agricultural Marketing Service (USDA/AMS). Under USDA/AMS rules, WSDA provides these services as a "federal-state inspection agency." Under USDA/AMS regulations and the cooperative agreement, the fees that WSDA charges for these services must be no less than the current USDA/AMS fees for these services. The applicable current USDA/AMS fees were published in the Federal Register in Vol. ((~~88, No. 98 on May 22, 2023~~)) 89, No. 88 on May 6, 2024, under the "Fresh Fruits, Vegetables, and Other Products (Inspection, Certification, and Standards)" table and, for the mileage fee related to terminal market inspection, for incorporation in the USDA/AMS "General Market Manual" at Appendix II, "Schedule of User Fees." In conformity with the cooperative agreement, WSDA adopts the same applicable fees for these services as set forth in this section.

(1) Mileage related to audit verification services is charged at the rate established by the Washington state office of financial management at the time the service was performed.

(2) Specialty crop fees/audit and terminal market fees:

Quality and Condition Inspections for Whole Lots	(($~~$242.00~~$)) $254.00 per lot		
Quality and Condition Half Lot or Condition-Only Inspections for Whole Lots	(($~~$200.00~~$)) $210.00 per lot		
Condition Half Lot	(($~~$185.00~~$)) $194.00 per lot		
Quality and Condition or Condition-Only Inspections for Additional Lots of the Same Product	(($~~$110.00~~$)) $116.00 per lot		
Dockside Inspections - Each Package Weighing <30 lbs.	$0.044 per pkg.		
Dockside Inspections - Each Package Weighing >30 lbs.	$0.068 per pkg.		
Charge per Individual Product for Dockside Inspection	(($~~$240.00~~$)) $252.00 per lot		
Charge per Each Additional Lot of the Same Product	(($~~$110.00~~$)) $116.00 per lot		
Inspections for All Hourly Work	Regular	Overtime	Holiday
	(($~~$116.00~~$)) $123.00	(($~~$153.00~~$)) $163.00	(($~~$190.00~~$)) $203.00
Audit Services - Federal	(($~~$155.00~~$)) $163.00 per audit		
Audit Services - State	(($~~$155.00~~$)) $163.00 per audit		

GFSI Certification Fee[2]	$250.00 per audit		

[2] Global Food Safety Initiative (GFSI) Certification Fee—$250 per GFSI audit to recoup the costs associated with attaining technical equivalency to the GFSI benchmarking requirements.

(3) The mileage fee related to terminal market inspection services is $1.96 per mile. Round trip mileage will be charged from an inspector's assigned location to the inspection site.

WSR 24-15-054
EXPEDITED RULES
DEPARTMENT OF HEALTH
(Washington Medical Commission)
[Filed July 16, 2024, 12:12 p.m.]

Title of Rule and Other Identifying Information: Removing references to osteopathic physician assistants. The Washington medical commission (commission) is proposing amendments to WAC 246-918-895 and 246-919-945, Pain management specialist—Chronic pain, to align rule language with currently accepted language.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2020, the legislature passed SHB 2378 Concerning physician assistants. This bill eliminated the profession of osteopathic physician assistant and placed all physician assistants under the authority of the commission. As a result of this bill, chapter 246-854 WAC, which pertained to osteopathic physician assistants, was repealed.

In both WAC 246-918-895 and 246-919-945, the commission references a section to the now-repealed chapter 246-854 WAC. Additionally, these sections reference both allopathic and osteopathic physician assistants. The commission intends to remove the references to chapter 246-854 WAC and to allopathic and osteopathic physician assistants.

Reasons Supporting Proposal: With the repeal of chapter 246-854 WAC and the elimination of classifying physician assistants as either allopathic or osteopathic, WAC 246-918-895 and 246-919-945 need to be updated to align rule language with currently accepted language.

Statutory Authority for Adoption: RCW 18.71.017 and SHB 2378 (chapter 80, Laws of 2020).

Statute Being Implemented: RCW 18.71.017.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington medical commission, governmental.

Name of Agency Personnel Responsible for Drafting: Amelia Boyd, 111 Israel Road S.E., Tumwater, WA 98501, 360-918-6336; Implementation and Enforcement: Kyle Karinen, 111 Israel Road S.E., Tumwater, WA 98501, 564-233-1557.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed amendments aligns rule language with currently accepted language without changing its effect.

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 Amelia Boyd, Department of Health, Washington Medical Commission, P.O. Box 47866, Olympia, WA 98504-7866, phone 360-918-6336, email amelia.boyd@wmc.wa.gov, AND RECEIVED BY September 23, 2024, at midnight.

July 16, 2024
Kyle S. Karinen
Executive Director
Washington Medical Commission

OTS-5454.4

AMENDATORY SECTION (Amending WSR 20-08-069, filed 3/26/20, effective 4/26/20)

WAC 246-918-895 Pain management specialist—Chronic pain. A pain management specialist shall meet one or more of the following qualifications:

(1) If ((~~an allopathic~~)) a physician assistant ((~~or osteopathic physician assistant~~)) must have a delegation agreement with a physician pain management specialist and meet((~~s~~)) the educational requirements and practice requirements listed below:

(a) A minimum of three years of clinical experience in a chronic pain management care setting;

(b) ((~~Credentialed in pain management by an entity approved by the commission for an allopathic physician assistant or the Washington state board of osteopathic medicine and surgery for an osteopathic physician assistant;~~

~~(c)~~)) Successful completion of a minimum of at least ((~~eighteen~~)) 18 continuing education hours in pain management during the past two years; and

((~~(d)~~)) (c) At least ((~~thirty~~)) 30 percent of the physician assistant's current practice is the direct provision of pain management care or in a multidisciplinary pain clinic.

(2) If an allopathic physician, in accordance with WAC 246-919-945.

(3) If an osteopathic physician, in accordance with WAC 246-853-750.

(4) If a dentist, in accordance with WAC 246-817-965.

(5) If a podiatric physician, in accordance with WAC 246-922-750.

(6) If an advanced registered nurse practitioner, in accordance with WAC 246-840-493.

OTS-5453.1

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-919-945 Pain management specialist—Chronic pain. A pain management specialist shall meet one or more of the following qualifications:

(1) If an allopathic physician or osteopathic physician:

(a) Is board certified or board eligible by an American Board of Medical Specialties-approved board (ABMS) or by the American Osteopathic Association (AOA) in physical medicine and rehabilitation, neurology, rheumatology, or anesthesiology;

(b) Has a subspecialty certificate in pain medicine by an ABMS-approved board;

(c) Has a certification of added qualification in pain management by the AOA;

(d) Is credentialed in pain management by an entity approved by the commission for an allopathic physician or the Washington state board of osteopathic medicine and surgery for an osteopathic physician;

(e) Has a minimum of three years of clinical experience in a chronic pain management care setting; and

(i) Has successful completion of a minimum of at least ((~~eighteen~~)) 18 continuing education hours in pain management during the past two years for an allopathic physician or three years for an osteopathic physician; and

(ii) Has at least ((~~thirty~~)) 30 percent of the allopathic physician's or osteopathic physician's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.

(2) If ((~~an allopathic~~)) a physician assistant, in accordance with WAC 246-918-895.

(3) ((~~If an osteopathic physician assistant, in accordance with WAC 246-854-330.~~

~~(4)~~)) If a dentist, in accordance with WAC 246-817-965.

((~~(5)~~)) (4) If a podiatric physician, in accordance with WAC 246-922-750.

((~~(6)~~)) (5) If an advanced registered nurse practitioner, in accordance with WAC 246-840-493.

WSR 24-15-055
EXPEDITED RULES
DEPARTMENT OF HEALTH
(Washington Medical Commission)
[Filed July 16, 2024, 12:13 p.m.]

Title of Rule and Other Identifying Information: Implementation of the physician assistant collaborative practice. The Washington medical commission (commission) is proposing amendments to chapter 246-918 WAC to implement ESHB 2041 (chapter 62, Laws of 2024), which aims to establish clear guidelines and requirements for the collaboration between physician assistants (PAs) and supervising physicians. Proposed changes also include clarifying and updating terms.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: From March 2020 to October 2022, PAs were allowed to practice without a delegation agreement under the Governor's Proclamation 20-32. During this period, PAs delivered safe and efficient care, improving access to essential services statewide. Given the ongoing need for more health care providers, especially in underserved and rural areas, the legislature passed ESHB 2041 to authorize PAs to engage in a collaborative practice with physicians. This collaborative practice seeks to enhance the scope of practice for PAs, streamline processes for their practice agreements, and ensure better integration within health care teams. This will promote team-based care and enhance health care access for the state's residents.

The commission is proposing amendments to several sections of chapter 246-918 WAC, pertaining to physician assistants, to incorporate the objectives of ESHB 2041.

Reasons Supporting Proposal: To implement the legislative changes and intentions of ESHB 2041; enhance the collaborative practice framework between physician assistants and physicians; improve access to health care services, particularly in underserved and rural areas; and ensure regulatory consistency and clarity for physician assistants practicing in Washington state.

Statutory Authority for Adoption: RCW 18.71A.020, 18.130.050; and ESHB 2041 (chapter 62, Laws of 2024).

Statute Being Implemented: Chapter 18.71A RCW; ESHB 2041.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington medical commission, governmental.

Name of Agency Personnel Responsible for Drafting: Amelia Boyd, 111 Israel Road S.E., Tumwater, WA 98501, 360-918-6336; Implementation and Enforcement: Kyle Karinen, 111 Israel Road S.E., Tumwater, WA 98501, 564-233-1557.

This notice meets the following criteria to use the expedited adoption process for these rules:

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, makes address or name changes, or clarifies language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The purpose of this rule making is to align existing rules with the changes made by ESHB 2041. The proposed amendments in this rule making are explicitly dictated by statute. Clarifying changes include replacing gender-specific terms.

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 Amelia Boyd, Department of Health, Washington Medical Commission, P.O. Box 47866, Olympia, WA 98504-7866, phone 360-918-6336, email amelia.boyd@wmc.wa.gov, AND RECEIVED BY September 23, 2024.

July 16, 2024
Kyle S. Karinen
Executive Director
Washington Medical Commission

OTS-5458.3

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-005 Definitions. The definitions in this section and definitions in RCW 18.71A.010 apply throughout this chapter unless the context clearly requires otherwise:

(1) "Collaboration agreement" means a written agreement that describes the manner in which the physician assistant is supervised by or collaborates with at least one physician and that is signed by the physician assistant and one or more physicians or the physician assistant's employer.

(2) "Commission" means the Washington medical commission.

((~~(2)~~)) (3) "Commission approved program" means a physician assistant program accredited by the committee on allied health education and accreditation (CAHEA); the commission on accreditation of allied health education programs (CAAHEP); the accreditation review committee on education for the physician assistant (ARC-PA); or other substantially equivalent organization(s) approved by the commission.

((~~(3)~~)) (4) "Employer" means the scope appropriate clinician, such as a medical director, who is authorized to enter into the collaboration agreement with a physician assistant on behalf of the facility, group, clinic, or other organization that employs the physician assistant.

(5) "NCCPA" means National Commission on Certification of Physician Assistants.

((~~(4) "Osteopathic physician" means an individual licensed under chapter 18.57 RCW.~~

~~(5)~~)) (6) "Participating physician" means a physician that supervises or collaborates with a physician assistant pursuant to a collaboration agreement.

(7) "Physician" means an individual licensed under chapter 18.57, 18.71, or 18.71B RCW.

((~~(6)~~)) (8) "Physician assistant" means a person who is licensed under chapter 18.71A RCW by the commission to practice medicine ((~~to a limited extent only under the supervision of a physician or osteopathic physician~~)) according to a collaboration agreement with one or more participating physicians.

(a) "Certified physician assistant" means an individual who has successfully completed an accredited and commission approved physician assistant program and has passed the initial national boards examination administered by the National Commission on Certification of Physician Assistants (NCCPA).

(b) "Noncertified physician assistant" means an individual who:

(i) Successfully completed an accredited and commission approved physician assistant program, is eligible for the NCCPA examination, and was licensed in Washington state prior to July 1, 1999;

(ii) Is qualified based on work experience and education and was licensed prior to July 1, 1989;

(iii) Graduated from an international medical school and was licensed prior to July 1, 1989; or

(iv) Holds an interim permit issued pursuant to RCW 18.71A.020(1).

(c) "Physician assistant-surgical assistant" means an individual who was licensed under chapter 18.71A RCW as a physician assistant between September 30, 1989, and December 31, 1989, to function in a limited extent as authorized in WAC 246-918-250 and 246-918-260.

((~~(7)~~)) (9) "Practice agreement" means a mutually agreed upon plan, as detailed in WAC 246-918-055, between a supervising physician and physician assistant, which describes the manner and extent to which the physician assistant will practice and be supervised.

((~~(8)~~)) (10) "Supervising physician" means any physician or osteopathic physician identified in a practice agreement as providing primary clinical and administrative oversight for a physician assistant.

((~~(9) "Alternate physician" means any physician or osteopathic physician who provides clinical oversight of a physician assistant in place of or in addition to the supervising physician.~~))

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-035 Prescriptions. ((~~(1)~~)) A physician assistant may prescribe, order, administer, and dispense legend drugs and Schedule II, III, IV, or V controlled substances consistent with the scope of practice ((~~in an approved practice agreement filed with the commission~~)) provided:

((~~(a)~~)) (1) The physician assistant has an active DEA registration; and

((~~(b)~~)) (2) All prescriptions comply with state and federal prescription regulations.

((~~(2) If a supervising physician's prescribing privileges have been limited by state or federal actions, the physician assistant will~~

~~be similarly limited in their prescribing privileges, unless otherwise authorized in writing by the commission.~~))

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-055 Collaboration and practice agreements. (1) A practice agreement must meet the requirements in RCW 18.71A.120.

(2) A physician assistant ((~~may have more than one supervising physician if the practice agreement is entered into with a group of physicians and the language of the practice agreement designates the supervising physicians.~~

~~(3) Pursuant to a practice agreement,~~)) practicing under a practice agreement that was entered into before July 1, 2025, may continue to practice under the practice agreement until the physician assistant enters into a collaboration agreement, as defined in RCW 18.71A.010. A physician assistant specified in this section shall enter into a collaboration agreement by either the renewal date of their license or July 1, 2025, whichever is later.

(3) A physician assistant may administer anesthesia, except the types of anesthesia described in subsection (4) of this section, without the personal presence of a ((~~supervising~~)) participating physician.

(4) Administration of general anesthesia or intrathecal anesthesia may be performed by a physician assistant with adequate education and training under direct supervision of a supervising anesthesiologist. Adequate education and training for administration of general or intrathecal anesthesia is defined as:

(a) Completion of an accredited anesthesiologist assistant program; or

(b) Performance of general or intrathecal anesthesia clinical duties pursuant to a valid practice agreement prior to September 22, 2021.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-075 Background check—Temporary practice permit. The commission may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the commission may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

A temporary practice permit that is issued by the commission is valid for six months. A one-time extension of six months may be gran-

ted if the national background check report has not been received by the commission.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician assistant during the time period specified on the permit. The temporary practice permit is a license to practice medicine as a physician assistant provided that the temporary practice permit holder has a ((~~practice~~)) collaboration agreement ((~~on file with the commission~~)) with a participating physician.

(3) The commission issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or the application for a full license is denied.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-080 Physician assistant—Requirements for licensure. (1) Except for a physician assistant licensed prior to July 1, 1999, individuals applying to the commission for licensure as a physician assistant must have graduated from an accredited commission approved physician assistant program and successfully passed the NCCPA examination.

(2) An applicant for licensure as a physician assistant must submit to the commission:

(a) A completed application on forms provided by the commission;

(b) Proof the applicant has completed an accredited commission approved physician assistant program and successfully passed the NCCPA examination;

(c) All applicable fees as specified in WAC 246-918-990; and

(d) Other information required by the commission.

(3) The commission will only consider complete applications with all supporting documents for licensure.

(4) ((~~A physician assistant may not begin practicing without first filing a practice agreement with the commission.~~

~~(5)~~)) A physician assistant licensed under chapter 18.57A RCW prior to July 1, 2021, renewing their license on or after July 1, 2021, must do so with the commission. Individuals licensed under chapter 18.57A RCW and renewing their license after July 1, 2021, will follow the renewal schedule set forth in WAC 246-918-171. The commission shall issue a physician assistant license to the individuals described in this subsection without requiring full application or reapplication, but may require additional information from the renewing physician assistant.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-105 Practice limitations due to participating physician disciplinary action. (1) To the extent a supervising, but not a collaborating, physician's prescribing privileges have been limited by any state or federal authority, either involuntarily or by the physi-

cian's agreement to such limitation, the physician assistant will be similarly limited in their prescribing privileges, unless otherwise authorized in writing by the commission.

(2) The physician assistant shall notify their supervising physician whenever the physician assistant is the subject of an investigation or disciplinary action by the commission. The commission may notify the supervising physician or other supervising physicians of such matters as appropriate.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-125 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this rule, laser, light, radiofrequency, and plasma devices (hereafter LLRP devices) are medical devices that:

(a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue; and

(b) Are classified by the federal Food and Drug Administration as prescription devices.

(2) Because an LLRP device penetrates and alters human tissue, the use of an LLRP device is the practice of medicine under RCW 18.71.011. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than the purpose set forth in subsection (1) of this section constitutes surgery and is outside the scope of this section.

PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) A physician assistant must be appropriately trained in the physics, safety and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(5) A physician assistant may use an LLRP device so long as it is with the consent of ((~~the supervising~~)) a participating physician((~~, it is in compliance with the practice agreement on file with the commission,~~)) and it is in accordance with standard medical practice.

(6) Prior to authorizing treatment with an LLRP device, a physician assistant must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that a nonphysician may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

PHYSICIAN ASSISTANT DELEGATION OF LLRP TREATMENT

(7) A physician assistant who meets the above requirements may delegate an LLRP device procedure to a properly trained and licensed professional, whose licensure and scope of practice allow the use of an LLRP device provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) Such delegated use falls within the supervised professional's lawful scope of practice;

(c) The LLRP device is not used on the globe of the eye; and

(d) The supervised professional has appropriate training in, at a minimum, application techniques of each LLRP device, cutaneous medicine, indications and contraindications for such procedures, preprocedural and postprocedural care, potential complications and infectious disease control involved with each treatment.

(e) The delegating physician assistant has written office protocol for the supervised professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:

(i) The identity of the individual physician assistant authorized to use the device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised professional must follow when performing procedures delegated pursuant to this rule;

(iii) Selection criteria to screen patients for the appropriateness of treatments;

(iv) Identification of devices and settings to be used for patients who meet selection criteria;

(v) Methods by which the specified device is to be operated and maintained;

(vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(vii) A statement of the activities, decision criteria, and plan the supervised professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician assistant concerning specific decisions made. Documentation shall be recorded after each procedure, and may be performed on the patient's record or medical chart.

(f) The physician assistant is responsible for ensuring that the supervised professional uses the LLRP device only in accordance with the written office protocol, and does not exercise independent medical judgment when using the device.

(g) The physician assistant shall be on the immediate premises during any use of an LLRP device and be able to treat complications, provide consultation, or resolve problems, if indicated.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-126 Nonsurgical medical cosmetic procedures. (1) The purpose of this rule is to establish the duties and responsibilities of a physician assistant who injects medication or substances for cosmetic purposes or uses prescription devices for cosmetic purposes. These procedures can result in complications such as visual impairment, blindness, inflammation, burns, scarring, disfiguration, hypopigmentation and hyperpigmentation. The performance of these procedures is the practice of medicine under RCW 18.71.011.

(2) This section does not apply to:

(a) Surgery;

(b) The use of prescription lasers, noncoherent light, intense pulsed light, radiofrequency, or plasma as applied to the skin; this is covered in WAC 246-919-605 and 246-918-125;

(c) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(d) The use of nonprescription devices; and

(e) Intravenous therapy.

(3) Definitions. These definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes. Laser, light, radiofrequency and plasma devices that are used to topically penetrate the skin are devices used for cosmetic purposes, but are excluded under subsection (2)(b) of this section, and are covered by WAC 246-919-605 and 246-918-125.

(b) "Prescription device" means a device that the federal Food and Drug Administration has designated as a prescription device, and can be sold only to persons with prescriptive authority in the state in which they reside.

PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) ((~~A physician assistant may perform a nonsurgical medical cosmetic procedure only after the commission approves a practice plan permitting the physician assistant to perform such procedures. A~~)) For a physician assistant to perform a nonsurgical medical cosmetic procedure, the physician assistant must ensure that ((~~the supervising~~)) their participating physician is in full compliance with WAC 246-919-606.

(5) A physician assistant may not perform a nonsurgical cosmetic procedure unless their ((~~supervising~~)) participating physician is fully and appropriately trained to perform that same procedure.

(6) Prior to performing a nonsurgical medical cosmetic procedure, a physician assistant must have appropriate training in, at a minimum:

(a) Techniques for each procedure;

(b) Cutaneous medicine;

(c) Indications and contraindications for each procedure;

(d) Preprocedural and postprocedural care;

(e) Recognition and acute management of potential complications that may result from the procedure; and

(f) Infectious disease control involved with each treatment.

(7) The physician assistant must keep a record of their training in the office and available for review upon request by a patient or a representative of the commission.

(8) Prior to performing a nonsurgical medical cosmetic procedure, either the physician assistant or the delegating physician must:

(a) Take a history;

(b) Perform an appropriate physical examination;

(c) Make an appropriate diagnosis;

(d) Recommend appropriate treatment;

(e) Obtain the patient's informed consent including disclosing the credentials of the person who will perform the procedure;

(f) Provide instructions for emergency and follow-up care; and

(g) Prepare an appropriate medical record.

(9) The physician assistant must ensure that there is a written office protocol for performing the nonsurgical medical cosmetic proce-

dure. A written office protocol must include, at a minimum, the following:

(a) A statement of the activities, decision criteria, and plan the physician assistant must follow when performing procedures under this rule;

(b) Selection criteria to screen patients for the appropriateness of treatment;

(c) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(d) A statement of the activities, decision criteria, and plan the physician assistant must follow if performing a procedure delegated by a physician pursuant to WAC 246-919-606, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made.

(10) A physician assistant may not delegate the performance of a nonsurgical medical cosmetic procedure to another individual.

(11) A physician assistant may perform a nonsurgical medical cosmetic procedure that uses a medication or substance that the federal Food and Drug Administration has not approved, or that the federal Food and Drug Administration has not approved for the particular purpose for which it is used, so long as the physician assistant's supervising physician is on-site during the entire procedure.

(12) A physician assistant must ensure that each treatment is documented in the patient's medical record.

(13) A physician assistant may not sell or give a prescription device to an individual who does not possess prescriptive authority in the state in which the individual resides or practices.

(14) A physician assistant must ensure that all equipment used for procedures covered by this section is inspected, calibrated, and certified as safe according to the manufacturer's specifications.

(15) A physician assistant must participate in a quality assurance program required of the supervising or sponsoring physician under WAC 246-919-606.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-130 Physician assistant identification. (1) A physician assistant must clearly identify ((~~himself or herself~~)) themself as a physician assistant and must appropriately display on their person identification as a physician assistant.

(2) A physician assistant must not present ((~~himself or herself~~)) themself in any manner which would tend to mislead the public as to their title.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-175 Retired active license. (1) To obtain a retired active license a physician assistant must comply with chapter 246-12 WAC, excluding WAC 246-12-120 (2)(c) and (d).

(2) ((~~A physician assistant with a retired active license must have a practice agreement on file with the commission in order to~~

~~practice except when serving as a "covered volunteer emergency worker" as defined in RCW 38.52.180 (5)(a) and engaged in authorized emergency management activities or serving under chapter 70.15 RCW.~~

~~(3)~~)) A physician assistant with a retired active license may not receive compensation for health care services.

((~~(4)~~)) (3) A physician assistant with a retired active license may practice under the following conditions:

(a) In emergent circumstances calling for immediate action; or

(b) Intermittent circumstances on a part-time or full-time non-permanent basis.

((~~(5)~~)) (4) A retired active license expires every two years on the license holder's birthday. Retired active credential renewal fees are accepted no sooner than ((~~ninety~~)) 90 days prior to the expiration date.

((~~(6)~~)) (5) A physician assistant with a retired active license shall report ((~~one hundred~~)) 100 hours of continuing education at every renewal.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-260 Physician assistant-surgical assistant (PASA)—Use and supervision. The following section applies to the physician assistant-surgical assistant (PASA) who is not eligible to take the NCCPA certification exam.

(1) Responsibility of PASA. The PASA is responsible for performing only those tasks authorized by ((~~the supervising~~)) their participating physician(s) and within the scope of PASA practice described in WAC 246-918-250. The PASA is responsible for ensuring their compliance with the rules regulating PASA practice and failure to comply may constitute grounds for disciplinary action.

(2) Limitations, geographic. No PASA may be used in a place geographically separated from the institution in which the PASA and ((~~the supervising~~)) their participating physician are authorized to practice.

(3) Responsibility of supervising physician(s). Each PASA shall perform those tasks they are authorized to perform only under the supervision and control of the supervising physician(s). Such supervision and control may not be construed to necessarily require the personal presence of ((~~the supervising~~)) their participating physician at the place where the services are rendered. It is the responsibility of ((~~the supervising~~)) their participating physician(s) to ensure that:

(a) The operating surgeon in each case directly supervises and reviews the work of the PASA. Such supervision and review shall include remaining in the surgical suite until the surgical procedure is complete;

(b) The PASA shall wear identification as a "physician assistant-surgical assistant" or "PASA." In all written documents and other communication modalities pertaining to their professional activities as a PASA, the PASA shall clearly denominate their profession as a "physician assistant-surgical assistant" or "PASA";

(c) The PASA is not presented in any manner which would tend to mislead the public as to their title.

AMENDATORY SECTION (Amending WSR 21-22-043, filed 10/27/21, effective 11/27/21)

WAC 246-918-410 Sexual misconduct. (1) The following definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the physician assistant-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to ((~~a number of~~)) several factors, including the nature, extent and context of the professional relationship between the physician assistant and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Physician assistant" means a person licensed to practice as a physician assistant under chapter 18.71A RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) A physician assistant shall not engage in sexual misconduct with a current patient or a key third party. A physician assistant engages in sexual misconduct when ((~~he or she engages~~)) they engage in the following behaviors with a patient or key third party:

(a) Sexual intercourse or genital to genital contact;

(b) Oral to genital contact;

(c) Genital to anal contact or oral to anal contact;

(d) Kissing in a romantic or sexual manner;

(e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;

(f) Examination or touching of genitals without using gloves, except for examinations of an infant or prepubescent child when clinically appropriate;

(g) Not allowing a patient the privacy to dress or undress;

(h) Encouraging the patient to masturbate in the presence of the physician assistant or masturbation by the physician assistant while the patient is present;

(i) Offering to provide practice-related services, such as medications, in exchange for sexual favors;

(j) Soliciting a date;

(k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the physician assistant.

(3) A physician assistant shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the physician assistant:

(a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the physician assistant's personal or sexual needs.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.030.

(5) To determine whether a patient is a current patient or a former patient, the commission will analyze each case individually, and will consider a number of factors including, but not limited to, the following:

(a) Documentation of formal termination;

(b) Transfer of the patient's care to another health care provider;

(c) The length of time that has passed;

(d) The length of time of the professional relationship;

(e) The extent to which the patient has confided personal or private information to the physician assistant;

(f) The nature of the patient's health problem;

(g) The degree of emotional dependence and vulnerability.

(6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(8) A violation of any provision of this rule shall constitute grounds for disciplinary action.

AMENDATORY SECTION (Amending WSR 06-03-028, filed 1/9/06, effective 2/9/06)

WAC 246-918-420 Abuse. (1) A physician assistant commits unprofessional conduct if the physician assistant abuses a patient. A physician assistant abuses a patient when ((~~he or she~~)) they:

(a) Make((~~s~~)) statements regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose;

(b) Remove((~~s~~)) a patient's clothing or gown without consent;

(c) Fail((~~s~~)) to treat an unconscious or deceased patient's body or property respectfully; or

(d) Engage((~~s~~)) in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.

(2) A violation of any provision of this rule shall constitute grounds for disciplinary action.

WSR 24-15-093
EXPEDITED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed July 19, 2024, 3:07 p.m.]

Title of Rule and Other Identifying Information: Chapter 110-302 WAC, Foundational quality standards for outdoor nature-based child care; WAC 110-302-0160 Promoting diversity and belonging.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state legislature changed the name of the curriculum referenced in WAC 110-302-0160 by passing the John McCoy (lulilaš) Memorial Tribal History, Culture, and Government Act (HB 1879) in 2024. The licensing division (LD) is updating this section to match the name change. This will have limited impact on any affected parties.

Reasons Supporting Proposal: The John McCoy (lulilaš) Memorial Tribal History, Culture, and Government Act was created to honor the work of John McCoy (lulilaš). LD is amending the WAC in accordance with this law and with the values of the department of children, youth, and families (DCYF).

Statutory Authority for Adoption: RCW 74.15.030.

Statute Being Implemented: RCW 28A.300.444.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Ann Radcliffe, 253-341-2325; Implementation and Enforcement: DCYF, statewide.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: This rule change only changes the name of the curriculum named in this section and clarifies other language without changing its effect.

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 Brenda Villarreal, DCYF, email dcyf.rulescoordinator@dcyf.wa.gov, https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online, BEGINNING July 25, 2024, 8:00 a.m., AND RECEIVED BY September 24, 2024, 11:59 p.m.

July 19, 2024
Brenda Villarreal
Rules Coordinator

OTS-5590.2

AMENDATORY SECTION (Amending WSR 23-10-059, filed 5/1/23, effective 6/1/23)

WAC 110-302-0160 Promoting diversity and belonging. (1) ONB providers must provide culturally and racially diverse learning opportunities((~~. Diverse learning opportunities must be demonstrated by the ONB provider's~~)) by using curriculum, activities, and materials that represent all children, families, staff, and the local Native American tribes, such as:

(a) Diverse dolls, books, pictures, games, or materials that do not reinforce stereotypes;

(b) Diverse music from many cultures in children's primary languages; and

(c) A balance of different ethnic and cultural groups, ages, abilities, family styles, and genders.

(2) ((~~An~~)) ONB providers must contact the local Native American tribes to begin a partnership, recognizing tribal sovereignty and incorporating cultural materials or practices, as appropriate.

(3) ONB programs must provide supplemental learning opportunities that incorporate elements of tribally approved curriculum such as, but not limited to, ((~~Washington's~~)) the John McCoy (lulilaš) since time immemorial early learning curriculum (((~~https://www.dcyf.wa.gov/tribal-relations/since-time-immemorial~~)) https://www.dcyf.wa.gov/tribal-relations/john-mccoy-lulilas-since-time-immemorial) or school-age curriculum (((~~https://www.k12.wa.us/student-success/resources-subject-area/time-immemorial-tribal-sovereignty-washington-state/elementary-curriculum~~)) https://ospi.k12.wa.us/student-success/resources-subject-area/john-mccoy-lulilas-time-immemorial-tribal-sovereignty-washington-state).

(4) ONB providers must appropriately intervene to stop biased behavior displayed by children or adults. Such intervention may include, but is not limited to:

(a) Redirecting an inappropriate conversation or behavior;

(b) Being aware of situations that may involve bias and responding appropriately; and

(c) Refusing to ignore bias.

WSR 24-15-115
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed July 23, 2024, 7:14 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-261 Commute trip reduction incentives.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue intends to amend WAC 458-20-261 to incorporate changes enacted pursuant to ESHB 2134 (2024); specifically, those in the "Tax credit authorized" statute, RCW 82.70.020, and the "Tax credit limitations" found in RCW 82.70.040.

Reasons Supporting Proposal: The update is to conform the rule to ESHB 2134, which passed during the 2024 legislative session.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.70.020 and 82.70.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Nikki Bizzarri, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1582; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

This notice meets the following criteria to use the expedited adoption process for these rules:

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is appropriate for this rule update because the department of revenue is incorporating changes resulting from 2024 legislation.

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 Nikki Bizzarri, Department of Revenue, 6400 Linderson Way S.W., Tumwater, WA, phone 360-534-1582, fax 360-534-1606, email nikkib@dor.wa.gov BEGINNING July 24, 2024, 12:00 a.m., AND RECEIVED BY September 24, 2024, 11:59 p.m.

July 23, 2024
Brent Madison
Rules Coordinator

OTS-5642.2

AMENDATORY SECTION (Amending WSR 23-23-124, filed 11/16/23, effective 12/17/23)

WAC 458-20-261 Commute trip reduction incentives. (1) **Introduction.** This rule explains the various commute trip reduction incentives. RCW 82.04.355 and 82.16.047 exempt amounts received from providing ride sharing, or ride sharing for persons with special transportation needs, from business and occupation (B&O) tax and public utility tax (PUT). RCW 82.08.0287 and 82.12.0282 provide sales and use tax exemptions for sales or use of passenger motor vehicles as ride sharing vehicles. Finally, chapter 82.70 RCW provides commute trip reduction incentives in the form of B&O tax or PUT credits in connection with ride sharing, public transportation, car sharing, and nonmotorized commuting.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Car sharing"** means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis. RCW 82.70.010.

(b) **"Nonmotorized commuting"** means commuting to and from the workplace by an employee, by walking or running, or by riding a bicycle or other device not powered by a motor. "Nonmotorized commuting" does not include teleworking, which is a program where work functions normally performed at a traditional workplace are instead performed by an employee at ((~~his or her~~)) their home, at least one day a week for the purpose of reducing the number of trips to the employee's workplace. RCW 82.70.010.

(c) **"Public transportation"** means the transportation of packages, passengers, and their incidental baggage, by means other than by charter bus or sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems. "Public transportation" includes passenger services of the Washington state ferries and passenger-only ferry services for those public transportation benefit areas eligible to provide passenger-only ferry service under RCW 36.57A.200. RCW 82.70.010.

(d)(i) **"Ride sharing"** means a carpool or vanpool arrangement whereby one or more groups not exceeding 15 persons each, including the drivers, and not fewer than three persons, including the drivers, are transported in a passenger motor vehicle with a gross vehicle weight not exceeding 10,000 pounds. RCW 46.74.010((~~(2)~~)). See subsection (4)(b) of this rule for increased minimum group size requirements in some circumstances. "Ride sharing" includes ride sharing on Washington state ferries. RCW 82.70.010((~~(6)~~)).

(ii) Ride sharing does not include transportation provided in the normal course of business by entities subject to chapters 46.72A (limousines), 48.177 (commercial transportation services), 81.66 (private, nonprofit transportation providers that receive compensation for transporting persons with special transportation needs), 81.68 (auto transportation companies), 81.70 (passenger charter and excursion carriers), and 81.72 (taxicabs) RCW, or offer peer-to-peer car sharing. "Peer-to-peer car sharing" means motor vehicle owners making their motor vehicles available for persons to rent for short periods of time.

(e) **"Ride sharing for persons with special transportation needs"** means an arrangement, whereby a group of persons with special transportation needs, and their attendants, is transported by a public so-

cial service agency or a private, nonprofit transportation provider, as defined in (e)(i) of this subsection, serving persons with special needs, in a passenger motor vehicle as defined by the department of licensing to include small buses, cutaways, and modified vans not more than 28 feet long. The driver need not be a person with special transportation needs. RCW 46.74.010.

(i) **"Private, nonprofit transportation provider"** means any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs, or pursuant to a contract with a state agency or funded by a grant issued by the department of transportation. RCW 81.66.010.

(ii) **"Persons with special transportation needs"** means those persons, including their personal attendants, who because of physical or mental disability, income status, or age, are unable to transport themselves or to purchase appropriate transportation. RCW 81.66.010.

(3) **B&O tax and PUT exemptions for providing ride sharing or ride sharing for persons with special transportation needs.** RCW 82.04.355 and 82.16.047 provide B&O tax and PUT exemptions for amounts received in the course of ride sharing or ride sharing for persons with special transportation needs.

(4) **Retail sales tax and use tax exemptions on sales or use of passenger motor vehicles as ride sharing vehicles.** RCW 82.08.0287 and 82.12.0282 provide retail sales tax and use tax exemptions for sales and use of passenger motor vehicles as ride-sharing vehicles. The following conditions apply to qualify for these exemptions:

(a) **Minimum duration of usage.** The passenger motor vehicles must be used primarily for ride sharing or ride sharing for persons with special transportation needs for 36 consecutive months beginning from the date of purchase (retail sales tax exemption) and the date of first use (use tax exemption). If the vehicle is used as a ride sharing vehicle for less than 36 consecutive months, the registered owner must pay the retail sales tax or use tax.

(b) **Increased passenger requirements for vehicles not operated by a public transportation agency.** If a vehicle is not operated by a public transportation agency, the minimum group size is increased from three persons each to five persons each including the driver. ((~~RCW 82.08.0287 (2)(b) and 82.12.0282 (2)(b).~~))

(c) **Qualifying jurisdictions.** Vehicles must be operated within:

(i) A county, or a city or town within that county, which has a commute trip reduction plan under chapter 70A.15 RCW; or

(ii) In other counties, where the vehicle is registered with, or operated by, a public transportation agency.

(d) **Ownership and operation.** The vehicle must be:

(i) Operated by a public transportation agency for the benefit of the general public;

(ii) Used by a major employer, as defined in RCW 70A.15.4010, as an element of its commute trip reduction program for their employees; or

(iii) Owned and operated by individual employees and registered either with the employer as part of its commute trip reduction program or with a public transportation agency.

(e) **Certification.**

(i) Individual employee owned and operated motor vehicles require certification that the vehicle is registered with a major employer or a public transportation agency; and

(ii) Major employers who own and operate motor vehicles for their employees must certify that the commute ride sharing arrangement con-

forms to a carpool or vanpool element contained within their commute trip reduction program.

(5) **B&O tax or PUT credit for ride sharing, public transportation, car sharing, or nonmotorized commuting.** RCW 82.70.020 provides a credit against B&O tax or PUT liability for amounts paid to or on behalf of employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting. The credit is equal to the amount paid to or on behalf of each employee multiplied by 50 percent, but may not exceed $60 per employee per fiscal year. No refunds will be granted for unused credits.

(a) **Who is eligible for this credit?**

(i) Employers in Washington are eligible for this credit, for amounts paid to or on behalf of their own or other employees, as financial incentives to such employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(ii) Property managers who manage worksites in Washington are eligible for this credit, for amounts paid to or on behalf of persons employed at those worksites, as financial incentives to such persons for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(b) **What is the credit amount?** The amount of the credit is equal to the amount paid to or on behalf of each employee multiplied by 50 percent, but may not exceed $60 per employee per fiscal year. ((~~RCW 82.70.020.~~))

(c) **What is a "fiscal year"?** A "fiscal year" begins on July 1st of one year and ends on June 30th of the following year.

(d) **When will the credit expire?** ((~~The credit program is scheduled to expire July 1, 2024. No credit may be claimed after June 30, 2024.~~))

(i) For those who meet the eligibility requirements described in subsection (5)(a)(i) of this rule, credits may be earned through December 31, 2024. Credits must be used for tax reporting periods within the calendar year for which they are approved and must be claimed before July 1, 2025.

(ii) For those who meet the eligibility requirements described in subsection (5)(a)(ii) of this rule, credits may be earned through December 31, 2023. Credits must be used for tax reporting periods within the calendar year for which they are approved and must be claimed before July 1, 2025.

(e) **What are the limitations of the credit?**

(i) The credit may not exceed the amount of B&O tax or PUT that would otherwise be due for the same fiscal year.

(ii) A person may not receive credit for amounts paid to or on behalf of the same employee under both B&O tax and PUT.

(iii) A person may not take a credit for amounts claimed for credit by other persons.

(iv) The total credit granted to a person under both B&O tax and PUT may not exceed $100,000 for a fiscal year.

(v) The total credit granted to all persons under both B&O tax and PUT may not exceed $2,750,000 in any fiscal year.

(vi) No credit or portion of a credit denied, because of exceeding the limitations in (e)(i), (iv), or (v) of this subsection, may be used against tax liability for other fiscal years.

(vii) No person is eligible for tax credits under RCW 82.70.020 if the additional revenues for the multimodal transportation account

((~~(~~)) under RCW 47.66.070((~~)~~ ~~created by chapter 361, Laws of 2003~~)) are terminated.

(f) **What are the credit procedures?**

(i) Persons applying for the credit must complete the commute trip reduction credit annual application. The application must be electronically filed and received by the department between January 1st and January 31st, following the calendar year in which the applicant made incentive payments. The commute trip reduction credit annual application is available through the business's "My DOR" account on the department's website at dor.wa.gov.

(ii) The department must approve or deny a completed application within 60 days of the January 31st deadline. The department must deny an application not received by the January 31st deadline, except the department may accept applications received up to 15 calendar days after the deadline if the application was not received because of circumstances beyond the control of the taxpayer. For what is considered circumstances beyond the control of a taxpayer, see WAC 458-20-228 Returns, payments, penalties, extensions, interest, stays of collection. Once the application is approved and the tax credit is granted, the department is not allowed to increase the credit.

(iii) If the total amount of credit applied for by all approved applicants in a fiscal year exceeds the limitation as provided in ((~~(i)(v) of this~~)) subsection (5)(e) of this rule, the amount of credit allowed for all applicants must be proportionally reduced so as not to exceed the limit. The amount reduced may not be carried forward and claimed in subsequent fiscal years.

(iv) To claim a commute trip reduction tax credit, a person must file all returns, forms, and other information the department requires in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format is not filed until received by the department in an electronic format. "Returns" has the same meaning as "return" in RCW 82.32.050.

(g) **Examples.** The following examples identify facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(i) **Example 1.** An employer pays $180 for a yearly bus pass for one employee. For another employee, the employer buys a bicycle helmet and bicycle lock for a total of $50. The sum of these two amounts, $230, is the total expenditure during a fiscal year of amounts paid to, or on behalf of, employees in support of ride sharing, using public transportation, using car sharing, and using nonmotorized commuting. The employer may claim a credit of $60 for the amount spent for the employee using the bus pass. 50 percent of $180 is $90, but the credit is limited to $60 per employee. The employer may claim a credit of $25 (50 percent of $50) for the amount spent for the employee who bicycles to work. Even though 50 percent of $230 (the total amount spent on both employees), works out to be less than $60 per employee, the credit is computed by looking at actual spending for each employee and not by averaging the spending for both employees.

(ii) **Example 2.** An employer provides parking spaces for the exclusive use of ride sharing vehicles. Amounts spent for signs, painting, or other costs related to the parking spaces do not qualify for the credit. This is because the credit is for financial incentives paid to or on behalf of employees. While the parking spaces support the use of ride sharing vehicles, they are not financial incentives and do not involve amounts paid to or on behalf of employees.

(iii) **Example 3.** An employer pays the property manager for a yearly bus pass for one employee who works at the worksite managed by the property manager. The property manager in turn pays the amount received from the employer to a public transportation agency to purchase the bus pass. Either the employer or the property manager, but not both, may take the credit for this expenditure.

WSR 24-15-121
EXPEDITED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed July 23, 2024, 9:11 a.m.]

Title of Rule and Other Identifying Information: Plumber certification rules; WAC 296-400A-120 What do I need to know about plumber trainee certificates?

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This expedited rule making proposes amendments to plumber trainee requirements under WAC 296-400A-120. The proposed changes would affect application for a certificate, supervision ratios, and reporting of plumbing hours for plumber trainees. The amendments are needed for uniformity with the requirements in SHB 1889 (chapter 50, Laws of 2024) and ESB 5997 (chapter 97, Laws of 2024).

Amending WAC 296-400A-120 What do I need to know about plumber trainee certificates?

- Permits plumber trainee applicants the option of providing an individual taxpayer identification number (ITIN) in lieu of a Social Security number (SSN) when applying for a plumber trainee certificate for uniformity with SHB 1889.
- Updates language for uniformity with ESB 5997. This includes:
  - Amending the expiration date for the required supervision ratios for plumber trainees to certified plumbers from December 31, 2025, to December 31, 2028; and
  - Removing the requirements that failure of a trainee to report plumbing hours worked for each employer is a violation of chapter 18.106 RCW, subject to an infraction under RCW 18.106.320, and must result in nonrenewal of a plumbing trainee certificate.
- Includes amendments to existing language for clarity.

Reasons Supporting Proposal: Rule amendments are required for uniformity with SHB 1889 and ESB 5997. SHB 1889 includes a provision that permits applicants the ability to provide an ITIN in lieu of an SSN when completing an application for a professional license, commercial license, certificate, permit, or registration under Title 18 RCW. The bill took effect July 1, 2024. ESB 5997 includes a provision that amends the expiration date of the required supervision ratios for plumber trainees to certified plumbers under RCW 18.106.070. The provision maintains the supervision ratio of three plumber trainees to one certified plumber on residential construction jobsites until December 31, 2028. A provision of the bill also removes the requirements that failure of a trainee to report plumbing hours worked for each employer is a violation of chapter 18.106 RCW, subject to an infraction under RCW 18.106.320, and must result in nonrenewal of the plumbing trainee certificate under RCW 18.106.070. The bill took effect June 6, 2024.

Statutory Authority for Adoption: Chapter 18.106 RCW.

Statute Being Implemented: SHB 1889, chapter 50, Laws of 2024; ESB 5997, chapter 97, Laws of 2024; and chapter 18.106 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Melissa McBride, Program Manager, Tumwater, Washington, 360-902-5571; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is necessary due to amendments to Washington state statutes, effective June 6, 2024, and July 1, 2024.

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 Meagan Edwards, Management Analyst, Department of Labor and Industries, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-522-0125, fax 360-704-1980, email Meagan.Edwards@Lni.wa.gov, BEGINNING 8 a.m. on July 24, 2024, AND RECEIVED BY 5 p.m. on September 23, 2024.

July 23, 2024
Joel Sacks
Director

OTS-5481.4

AMENDATORY SECTION (Amending WSR 21-13-041, filed 6/10/21, effective 7/1/21)

WAC 296-400A-120 What do I need to know about plumber trainee certificates? General.

(1) **Journey level and specialty plumber original trainee certificates:**

The department will issue an original trainee certificate when the trainee applicant submits a complete trainee certificate application including:

(a) Date of birth, mailing address, Social Security number or individual tax identification number; and

(b) All appropriate fees as listed in WAC 296-400A-045.

(c) If an individual has previously held a plumbing trainee certificate, then that individual is not eligible for a subsequent original trainee certificate.

(d) All applicants for a plumbing trainee certificate must be at least ((~~sixteen~~)) 16 years of age and must follow requirements as defined in WAC 296-125-030.

(2) Renewal.

(a) The department issues separate trainee certificates once a year.

(b) The plumbing trainee may not apply for renewal more than ((~~ninety~~)) 90 days prior to the expiration date. Plumber trainee certificates are valid for one year.

(c) All applicants for trainee certificate of renewal must:

(i) Submit a complete renewal application;

(ii) Pay all appropriate fees; and

(iii) Completed the continuing education requirements described in chapter 296-400A WAC. Backflow trainees are exempt from continuing education requirements.

(d) If an individual files inaccurate or false evidence of continuing education information when renewing a plumbing trainee certificate, the individual's certificate may be suspended or revoked.

(e) An individual who has not completed the required hours of continuing education can renew a trainee certificate; however, the training certificate will be placed in an inactive status. The inactive training certificate will be returned to active status upon validation by the department of the required continuing education.

(f) If continuing education hours have not been met, trainee certificates will become expired/inactive and any plumbing work experience obtained by the trainee in expired/inactive status will not be credited.

(g) An individual may not renew a revoked trainee certificate.

(h) Apprentices registered in an approved program according to chapter 49.04 RCW who are obtaining classroom training consistent with the continuing education requirements under chapter 18.106 RCW and this chapter, as approved by the department, are deemed to have met the continuing education requirements necessary to renew a trainee certificate. Included under this exemption are active trainees that are not in the formal approved program according to chapter 49.04 RCW but are attending all hours of required classroom training along with the apprentices and meeting the work experience as required under chapter 18.106 RCW and this chapter. The plumber craft training school will be required to supply the department the necessary documentation to prove there was full hourly attendance of these trainees as is required of the apprentices while they attend the classroom training.

(i) The trainee will not be issued a renewal or reinstated training certificate if the individual owes the department money as a result of an outstanding final judgment.

(3) Ratio/supervision.

(a) Commercial/residential.

(i) A certified residential specialty plumber, residential service plumber, or domestic pump specialty plumber working on a commercial job site may work as a journey level trainee only if they have a current trainee certificate on their person while performing commercial plumbing work.

(ii) On a job site, the ratio of certified plumbers to plumber trainees must be:

(A) Until December 31, ((~~2025~~)) 2028:

(I) No more than three trainees working on any one residential structure job site for every certified specialty plumber or journey level plumber working as a specialty plumber;

(II) No more than one trainee working on any one job site for every certified journey level plumber working as a journey level plumber; and

(III) No more than one trainee working on any one job site for every certified residential service.

(B) After December 31, ((~~2025~~)) 2028, no more than two trainees may work on any residential structure job site for every certified specialty plumber or journey level plumber working as a specialty plumber.

(iii) Supervision must be a minimum of ((~~seventy-five~~)) 75 percent of the time spent on each and every job site.

(b) Domestic pump.

One appropriate domestic pump specialty plumber or one journey level plumber working on a domestic pump system may supervise no more than three trainees, after December 31, ((~~2025~~)) 2028, no more than two trainees can be supervised. Supervision must be a minimum of ((~~seventy-five~~)) 75 percent of the time spent on each and every job site.

(c) Medical gas.

A plumber trainee or specialty plumber who has a current trainee certificate with the state of Washington and has successfully completed or is enrolled in an approved medical gas piping installer training course may work on medical gas piping systems. Work may only occur when there is direct supervision by an active Washington state certified journey level plumber with an active medical gas piping installer endorsement issued by the department. Supervision must be ((~~one hundred~~)) 100 percent of the time spent on each and every job site on a one-to-one ratio.

(d) Backflow.

A backflow specialty plumber, a journey level plumber on a commercial job site, or a residential specialty plumber on a residential job site must supervise one backflow trainee to perform maintenance and repair work on every backflow assembly on potable water systems inside every commercial or residential building. The ratio must be one to one for ((~~one hundred~~)) 100 percent of the time on each and every job site.

(4) Affidavits of experience.

(a) At the time of renewal, the holder must provide the department with an accurate list of the holder's employers in the plumbing construction industry for the previous annual period. The individual must submit a completed, signed, and notarized affidavit(s) of experience. The affidavit of experience must accurately attest to:

(i) The plumbing installation work performed for each employer the individual worked for in the plumbing trade during the previous period;

(ii) The correct plumbing category the individual worked in; and

(iii) The actual number of hours worked in each category, worked under the proper supervision of a Washington certified journey level plumber, certified domestic pump specialty plumber, or residential specialty plumber.

(b) The trainee should ask each employer and/or apprenticeship-training director for an accurately completed, signed, and notarized affidavit of experience for the previous certification period. The employer(s) or apprenticeship training director(s) must provide the previous period's affidavit of experience to the individual within ((~~twenty~~)) 20 days of the request.

(c) Plumbing hours for the previous year((~~s~~)) are to be submitted within ((~~thirty~~)) 30 days after the renewal date of the plumbing training certificate((~~; failure to submit within thirty days is a violation of chapter 18.106 RCW. The~~)). Failure to submit within 30 days

may result in the individual ((~~may~~)) not ((~~receive~~)) receiving credit for ((~~these previous plumbing~~)) those hours ((~~and will result in non-renewal of the trainee certificate and subject to an infraction under RCW 18.106.320~~)). See RCW 18.106.070(2).

(d) Trainee hours will not be credited if the trainee owes outstanding penalties for violations of this chapter.

(e) Trainee hours will not be credited during periods of time when the trainee card is expired or inactive.

WSR 24-15-125
EXPEDITED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed July 23, 2024, 12:23 p.m.]

Title of Rule and Other Identifying Information: Subminimum wage certificates; chapters 296-126 and 296-128 WAC.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to repeal rules relating to subminimum wage certificates issued for the employment of individuals with disabilities at less than the minimum wage under chapter 296-128 WAC, Minimum wages, and chapter 296-126 WAC, Standards of labor for the protection of the safety, health and welfare of employees for all occupations subject to chapter 49.12 RCW. This rule making repeals WAC 296-128-050 through 296-128-090 and amends WAC 296-126-001, 296-126-010, 296-126-015, and 296-126-020 to remove applicable subsections.

Reasons Supporting Proposal: RCW 49.46.170(2), enacted under 2021's ESSB 5284 (chapter 97, Laws of 2021), eliminated the department of labor and industries' (L&I) authority to issue any subminimum wage certificates for the employment of individuals with disabilities under RCW 49.12.110 and 49.46.060 as of July 31, 2023.

Statutory Authority for Adoption: RCW 49.46.170(2).

Statute Being Implemented: RCW 49.46.170(2).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Davis, Tumwater, Washington, 253-596-3813; Implementation and Enforcement: Bryan Templeton, Tumwater, Washington, 360-902-6639.

This notice meets the following criteria to use the expedited adoption process for these rules:

Content is explicitly and specifically dictated by statute.

This notice meets the following criteria to use the expedited repeal process for these rules:

The rule is no longer necessary because of changed circumstances.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Expedited rule making is necessary to align rules with RCW 49.46.170 which eliminated L&I's authority to issue subminimum certifications for employment of individuals with disabilities.

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 Michael Davis, L&I, Fraud Prevention and Labor Standards, Employment Standards, P.O. Box 44510, Olympia, WA 98504-4510, phone 253-596-3813, email ESRules@Lni.wa.gov, AND RECEIVED BY September 23, 2024.

July 23, 2024
Joel Sacks
Director

OTS-5572.1

AMENDATORY SECTION (Amending WSR 10-04-092, filed 2/2/10, effective 3/15/10)

WAC 296-126-001 Applicability. (1) These rules apply to employers and employees in the state as defined in RCW 49.12.005 (3) and (4).

(2) These rules do not apply to:

(a) Newspaper vendors or carriers;

(b) Domestic or casual labor in or about private residences; or

(c) Agricultural labor as defined in RCW 50.04.150((~~; or~~

~~(d) Sheltered workshops~~)).

Note 1: Public employers and employees should review RCW 49.12.005 (3)(a) and (b) and WAC 296-126-002(2) to determine applicability.

Note 2: For a variance from the rules under this chapter, see WAC 296-126-130.

OTS-5439.1

AMENDATORY SECTION (Amending WSR 10-04-092, filed 2/2/10, effective 3/15/10)

WAC 296-126-010 Exceptions to minimum wage rate—Special certificates. (1) The director may issue a special certificate to an employer authorizing the employer to pay the following employees at a wage rate that is less than the applicable minimum wage rate:

(a) ((~~An employee who is physically or mentally handicapped to such a degree that he or she is unable to obtain employment in the competitive labor market;~~

~~(b)~~)) A trainee or learner not subject to the jurisdiction of the Washington state apprenticeship and training council under chapter 49.04 RCW; or

((~~(c)~~)) (b) A student learner.

(2) The director shall fix the reduced minimum wage and issue a special certificate only where the director determines that an employer has applied for it in good faith.

(3) The director shall fix the duration of the validity of the certificate.

AMENDATORY SECTION (Amending WSR 10-04-092, filed 2/2/10, effective 3/15/10)

WAC 296-126-015 Wage rates under special certificates. Employers shall compute the wage rates under special certificates as follows:

(1) ((~~Physically and mentally handicapped employees: At a rate designed to adequately reflect the employees' earning capacity.~~

~~(2)~~)) Learners: At ((~~eighty-five~~)) 85 percent of the applicable minimum wage rate.

((~~(3)~~)) (2) Student-learner: At ((~~seventy-five~~)) 75 percent of the applicable minimum wage rate.

Note: See chapter 49.46 RCW and chapter 296-128 WAC for minimum wage laws.

AMENDATORY SECTION (Amending WSR 89-10-014, filed 4/24/89, effective 6/1/89)

WAC 296-126-020 Minimum wages—Minors. Except where a higher minimum wage is required by Washington state or federal law:

(1) Every employer shall pay to each of his or her employees who have reached their ((~~sixteenth or seventeenth~~)) 16th or 17th year of age a rate of pay per hour which is equal to the hourly rate required by RCW 49.46.020 for employees ((~~eighteen~~)) 18 years of age or older, whether computed on an hourly, commission, piecework, or other basis, except as may be otherwise provided under this chapter.

(2) Every employer shall pay to each of his or her employees who have not reached their ((~~sixteenth~~)) 16th year of age a rate of pay per hour that is not less than ((~~eighty-five~~)) 85 percent of the hourly rate required by RCW 49.46.020 for employees ((~~eighteen~~)) 18 years of age or older whether computed on an hourly, commission, piecework, or other basis, except as may be otherwise provided under this chapter.

((~~(3) These provisions shall not apply to handicapped minors for whom special handicapped minor work permits have been issued as provided in RCW 49.12.110. The handicapped rate therein shall be set at a rate designed to adequately reflect the individual's earning capacity.~~))

OTS-5440.1

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-128-050	Applicability of this regulation.
WAC 296-128-055	Definition.
WAC 296-128-060	Application for certificate.
WAC 296-128-065	Conditions for granting a certificate.
WAC 296-128-070	Issuance of certificate.
WAC 296-128-075	Terms of certificate.
WAC 296-128-080	Renewal of certificate.
WAC 296-128-085	Review.
WAC 296-128-090	Amendment of this regulation.

WSR 24-15-134
EXPEDITED RULES
ENERGY FACILITY SITE
EVALUATION COUNCIL
[Filed July 23, 2024, 3:29 p.m.]

Title of Rule and Other Identifying Information: Title 463 WAC; with the exception of chapters 463-50 and 463-66 WAC, all chapters of Title 463 WAC will be updated.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The energy facility site evaluation council (EFSEC) proposes to amend all but two of the chapters in Title 463 WAC in order to bring them into alignment with the current statute. In particular, the legislature adopted E2SHB 1812 in 2022 that established EFSEC as an independent agency. Additionally, other legislation such as the environmental health law reorganization (SHB 2246 of 2020) was also adopted. EFSEC rules, Title 463 WAC, have not been updated since that time.

Proposed changes only affect internal agency operations not subject to violation by a person, adopt or incorporate Washington state statutes or rules of other state agencies; correct typographical errors, make address or name changes, or clarify language without changing its effect; or is content explicitly and specifically dictated by statute.

Reasons Supporting Proposal: Some of the rules in Title 463 WAC have not been amended since EFSEC was established and a number have not been amended since 2004. Correcting legal references, updating the agency address, and bringing the rules in line with current statute will clarify EFSEC's internal operations for the benefit of individuals and companies who use the services of EFSEC.

Statutory Authority for Adoption: RCW 80.50.040.

Statute Being Implemented: Chapter 80.50 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: EFSEC, governmental.

Name of Agency Personnel Responsible for Drafting: Ali Smith, Management Analyst 3, P.O. Box 43172, Olympia, WA 98503-3172, 360-515-2011; Implementation: Ami Hafkemeyer, Director of Siting and Compliance, P.O. Box 43172, Olympia, WA 98503-3172, 360-664-1305; and Enforcement: Sonia Bumpus, Director, P.O. Box 43172, Olympia, WA 98503-3172, 360-664-1363.

This notice meets the following criteria to use the expedited adoption process for these rules:

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, makes address or name changes, or clarifies language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: EFSEC believes that expedited rule making is appropriate to bring its rules into line with prevailing statute without materially altering processes, especially since most rules have not been amended since 2004 or earlier and there has been a considerable amount of change in statutory language related to the environment and energy policy.

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 Ali Smith, Management Analyst 3, EFSEC, P.O. Box 43172, Olympia, WA 98503-3172, phone 360-515-2011, email rulemaking@efsec.wa.gov, BEGINNING August 7, 2024, AND RECEIVED BY September 24, 2024.

July 23, 2024
Martin McMurry
Director of Administration

OTS-5573.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-010 Purpose. The purpose of this chapter is to describe the council and set out general information on agency operations and implementation of the public records provisions of chapter ((~~42.17~~)) 42.56 RCW.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-020 Description of organization. (1) The council is a state agency authorized by chapter 80.50 RCW.

(2) The voting membership of the council consists of directors, administrators, or their designees of the member agencies listed in RCW 80.50.030. In addition, a voting county representative, a voting city representative, and a nonvoting port district representative may sit with the council under the circumstances described in RCW 80.50.030.

(3) The chair is the person appointed by the governor with the advice and consent of the senate to a term coextensive with that of the governor pursuant to RCW 80.50.030.

(a) The chair has a vote on all matters before the council and has an office at the council's office.

(b) Pursuant to RCW 80.50.030, the chair may designate a member of the council to serve as acting chair. The acting chair shall remain

entitled to vote on any proposed council action and shall continue to fulfill ((~~his or her~~)) their responsibilities under RCW 80.50.030 (3) through (5).

(c) The chair or a designee executes all official documents, contracts, and other materials on behalf of the council.

(d) The chair or any member of the council may perform such duties as are specifically authorized and directed by the council, not in conflict with RCW 80.50.040.

((~~(4) The department of community, trade, and economic development provides administrative services and staff to the council.~~))

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-030 Council office—Business hours. The council office is currently located at ((~~925 Plum Street S.E., Olympia~~)) 621 Woodland Square Loop S.E., Lacey, Washington. It is open each day for the transaction of business from 8:00 a.m. to 5:00 p.m., Saturdays, Sundays, and legal holidays excepted. Notices, applications, business correspondence, or other communication should be sent to the council office. The council's mailing address is P.O. Box 43172, Olympia, WA ((~~98504~~)) 98503-3172.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-050 General method by which operations are conducted. (1) In general, the council reaches major policy and operational decisions through formal council action at meetings held pursuant to the Open Public Meetings Act (chapter 42.30 RCW), the state Administrative Procedure Act (chapter 34.05 RCW), or other applicable laws.

(2) In some circumstances, the chair may perform duties which are specifically authorized by the council.

(3) ((~~Day-to-day administration is handled by the council manager and staff.~~)) The chair appoints a director to oversee the operations of the council and carry out the duties of council as delegated by the chair.

(4) The council ((~~manager is responsible for implementing the decisions of the council and for directing the staff that supports~~)) director employs and has supervisory authority over such administrative and professional personnel as may be necessary to perform the administrative work of the council.

(5) The council staff shall assist applicants in identifying issues presented by the application, review all information submitted, and recommend resolutions to issues in dispute that would allow site approval, and may make recommendations to the council.

(6) The council staff are not parties to adjudicative proceedings conducted under chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-060 How to obtain public records. (1) All public records of the council are available for public inspection and copying at the council office, during regular business hours, in accordance with chapter ((~~42.17~~)) 42.56 RCW and these rules, except as otherwise provided by law.

(2) The public may request public records through the following mechanisms:

(a) Mail. Requests by mail shall be addressed to the council's mailing address: The Energy Facility Site Evaluation Council, P.O. Box 43172, Olympia, WA ((~~98504~~)) 98503-3172. The front of the envelope shall conspicuously state: "Public Records Request."

(b) Email. ((~~As of the date these rules are promulgated,~~)) The council's email address for public records requests is: ((~~efsec@ep.cted.wa.gov~~)) records@efsec.wa.gov. This email address may change without notice. The subject line of email requests shall state: "Public Records Request." Requesting records via email is the council's preferred method for tracking and efficiency purposes.

(c) In person. In-person requests shall be made at the council's office, ((~~925 Plum Street S.E., Olympia~~)) 621 Woodland Square Loop, S.E., Lacey, Washington, or as such office may subsequently be relocated, during regular business hours.

(d) Fax. Faxed requests shall be accompanied by a cover sheet that conspicuously states: "Public Records Request."

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-070 Public records officer. The council's public records officer is the council ((~~manager~~)) director, or designee, who is responsible for implementation of these and other applicable regulations regarding public records.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-080 Contents of requests for public records. Chapter ((~~42.17~~)) 42.56 RCW requires the council to prevent invasions of privacy, protect public records from damage or disorganization, prevent excessive interference with its essential functions, and prevent unreasonable disruptions of operations. Accordingly, the public may inspect and copy public records upon compliance with the following procedures:

(1) A member of the public who seeks a public record shall make a written request. The purpose of requiring written requests is to assist the council in tracking, managing, and responding to the request in a timely and orderly fashion.

(2) No particular form of writing is required so long as the request complies with WAC 463-06-060 and contains the following information:

(a) Name((~~, mailing address, and telephone number~~)) and contact information of the requesting party;

(b) The date on which the written request is made;

(c) Identification of the record requested with sufficient particularity that the council can identify the record and make it available. Such identifying information should, if possible, include the title, subject matter, and date of the record;

(d) A signed statement that the records will not be used for commercial purposes if a list of individuals is being requested, or for any use prohibited by law; and

(e) A prominent statement that the request is being made pursuant to chapter ((~~42.17~~)) 42.56 RCW and these regulations.

(3) To facilitate processing the request, the requesting party should also include:

(a) ((~~Either a fax number or~~)) Contact information, such as an email address ((~~or both~~)).

(b) A reference to the record as it is described in the current public record index maintained by the council.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-110 Copying and fees. ((~~(1) Copying. The council shall make copies on the council's copy equipment when doing so will not unreasonably disrupt the council's operations or cause excessive interference with other essential functions. If it is determined that making copies will disrupt the council's operations, an alternative schedule will be developed, or other arrangements for copying will be made.~~

~~(2) Fees.~~

~~(a) The council shall not impose a fee for locating documents, for making them available, or for inspection of records by the public.~~

~~(b) The council may charge up to fifteen cents per page fee for copies of public records provided.~~

~~(c) The council, at its option, shall not provide copies unless the associated fees have been paid in full prior to delivery of documents; provided that this advance payment requirement shall not apply to other government agencies or tribes or to parties or intervenors in proceedings before the council.~~)) The council will charge to provide copies of public records as provided in this section.

(1) **Adoption of statutory copying charges.** The council has not calculated the actual costs for copying its records because to do so would be unduly burdensome for the following reasons:

(a) The council has insufficient resources to conduct a comprehensive study to determine the actual costs of copying its records;

(b) To conduct a study of the council's actual copying costs would interfere with other essential agency functions; and

(c) The legislature has established reasonable fees and costs in RCW 42.56.120 after the public and requestors have commented on, and been informed of, such fees and costs.

To timely implement a fee schedule consistent with the Public Records Act, it is more cost-efficient and expeditious and in the public interest for the council to adopt the legislature's approved fees and costs for most of the council's records, as authorized in RCW

42.56.120 and as published in the council's fee schedule and available on the council's website at https://efsec.wa.gov.

(2) **Fee schedule.** Persons may obtain the schedule of the council's copying charges by contacting the council's records office at records@efsec.wa.gov. The council does not charge sales tax on copies it makes at its own facilities.

(3) **Cost estimates.** Upon request, the council will provide a requestor with a summary of the applicable charges before the council makes copies of the requested records. The requestor may revise the request to reduce the requested number of copies and correspondingly reduce the copying charges.

(4) **Deposits and prepayment.** Before beginning to make copies, the public records officer may require a requestor to pay a deposit of up to 10 percent of the estimated costs of copying all the requested records. The public records officer may also require the requestor to pay the remainder of the copying costs before providing all the records, or to pay the costs of copying an installment before providing that installment.

(5) **Waiver or other fee arrangements.** The council may waive copying charges. The council also may enter into a contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges or in response to voluminous or frequently occurring requests.

(6) **Mailing and delivery costs.** The council may charge the actual costs it incurs to mail or use a commercial carrier to deliver copies of the requested public records, including the cost of any digital storage medium or device on which the council copies the records (such as a disc or flash drive), the shipping container or envelope, and the postage or delivery charge.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-120 Disclosure procedure. (1) In accordance with RCW ((~~42.17.320~~)) 42.56.520, within five business days of receiving a public records request, the council shall respond by:

(a) Providing the records;

(b) Providing an internet address and link on the council's website to the specific records requested, except that if the requestor notifies the council that they cannot access the records through the internet, then the council must provide copies of the record or allow the requestor to view copies using an agency computer;

(c) Acknowledging the council has received the request and providing a reasonable estimate of the time the council will require to respond; ((~~or~~

~~(c)~~)) (d) Requesting clarification from the requestor if the request is unclear or does not sufficiently identify the requested records. If the requestor does not respond to the council's request for clarification, the public records officer or designee need not respond to the public records request and may consider the request closed; or

(e) Denying the record request, as set out in subsection (4) of this section.

(2) The council shall review the requested public records prior to disclosure.

(3) If the records do not contain materials exempt from public disclosure, the council shall disclose the records.

(4) If the records contain materials exempt from public disclosure, the council shall deny disclosure of the exempt materials and disclose any remaining, nonexempt materials. At the time of denial, the council shall clearly specify in writing the reasons for denial, including a statement of the specific exemptions or reason for denial of disclosure.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-06-170 Records index. The council shall maintain and make available for public inspection an index of those classes of records described in RCW ((~~42.17.260~~)) 42.56.070. The index is available for public inspection and copying.

(1) Form and content. The index shall be maintained in electronic form with copies available on paper. The index shall contain topic headings.

(2) Location and availability. The index shall be available to the public under the same rules and on the same conditions as are applied to other public records.

(3) Schedule for revisions and updates. The council shall revise and update the index annually.

OTS-5580.1

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-10-010 Definitions. Except where otherwise indicated in the following chapters, the following terms have the meaning shown:

(1) "Council" means the energy facility site evaluation council created pursuant to chapter 80.50 RCW and, where appropriate, to the staff of the council.

(2) "Applicant" means ((~~the~~)) any person ((~~or entity making~~)) who makes an application for ((~~a~~)) site certification ((~~or permit covered by this title~~)) pursuant to the provisions of this chapter.

(3) "Adjudicative proceeding" means a proceeding conducted pursuant to RCW 80.50.090((~~(3)~~)) (4) and the state Administrative Procedure Act.

(4) "Certificate holder" means a person or entity who is signatory to a site certification agreement, which has been signed by the governor, and who is bound by its terms.

(5) "Chair" means the person appointed by the governor pursuant to RCW 80.50.030.

(6) "((~~Council manager~~)) Director" means the individual who ((~~handles day-to-day administration for the council, administers the decisions of the council, and directs the staff that supports the council~~)) oversees the operations of the council, carries out the du-

ties of the chair as delegated by the chair, and employs and exercises supervisory authority over all staff of the council.

(7) "Energy facility" ((~~includes electrical~~)) means an energy plant or transmission facilities under RCW 80.50.020((~~(8)~~)) (13) and 80.50.020(29) and ((~~alternative energy resources~~)) clean energy product manufacturing facilities under RCW 80.50.020((~~(18)~~)) (7).

(8) "Site certification agreement (SCA)" means the agreement between the state of Washington and the applicant that prescribes the conditions required for construction and operation of an energy facility.

(9) "Rule" as used herein, includes the terms "agency order," "directive" or "regulation" in accordance with RCW 34.05.010(16).

OTS-5581.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-14-030 Public meetings and hearings policy for application reviews. The council encourages, and will provide for, public participation in its public meetings and hearings during reviews of applications for site certification as afforded by law and rule. The following sets forth the public participation in those meetings and hearings required in RCW 80.50.090.

(1) The ((~~public~~)) informational public hearing as prescribed in RCW 80.50.090(1) shall be held in the county of the proposed site. All persons shall be afforded an opportunity to comment to the council regarding the proposed site.

(2) The public land use consistency hearing as prescribed in RCW 80.50.090(2) shall be held in the county where the proposed site is located to determine whether or not the proposed use of the site is consistent and in compliance with city, county, or regional land use plans and zoning ordinances at the time of application. If the proposed site is located in more than one county, a land use consistency hearing shall be held in each county. The council shall limit public testimony at this hearing to the issue of consistency and compliance with city, county, or regional land use plans and zoning ordinances.

(3) Although all persons desirous of participating may not be accorded "party" status in the public hearing held as an adjudicative proceeding under chapter 34.05 RCW prior to preparation of any recommendation to the governor, the council, at times and places designated by the council, upon compliance with reasonable procedures, shall allow any person desiring to be heard to speak in favor of or in opposition to the proposed site by raising one or more specific issues, provided that the person has raised the issue or issues in writing with specificity during the application review process or during the public comment period held prior to the start of the adjudicative hearing.

(4) The council views the provisions of RCW 80.50.090(4) as authorizing it to conduct additional public hearings as "public informational hearings," "public land use consistency hearings" or "adjudicative proceedings." The council may also hold public meetings concerning the application for site certification.

AMENDATORY SECTION (Amending WSR 78-09-078, filed 8/28/78)

WAC 463-14-040 County, city, and port district representatives—Segmentation of hearings and issues. RCW 80.50.030 (4), (5), and (6) necessitate segmentation of hearings and issues in instances where proposed energy facilities would extend beyond the boundaries of a single county, city, and/or port district.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-14-050 Preemption. Chapter 80.50 RCW operates as a state preemption of all matters relating to the certification of the location, construction, and operational conditions of certification of the energy ((~~facility sites~~)) facilities included under RCW 80.50.060 as now or hereafter amended. Chapter 80.50 RCW certification is given in lieu of any permit, certificate, or similar document ((~~which might otherwise be~~)) required by ((~~state agencies and local governments~~)) any department, agency, division, bureau, commission, board, or political subdivision of this state, whether a member of the council or not.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-14-080 EFSEC deliberative process. RCW 80.50.100 requires the council to report to the governor its recommendation of approval or rejection of an application for certification. In order for the council to develop such a recommendation, it shall use wherever applicable the following deliberative process:

(1) Evaluate an application to determine compliance with chapter 80.50 RCW and chapter 463-60 WAC;

(2) Contract for an independent consultant study ((~~of the application~~)) to measure the consequences of the proposed energy facility on the environment or any matter that it deems essential to an adequate approval of the site;

(3) Conduct a review under ((~~the~~)) chapter 43.21C RCW, State Environmental Policy Act;

(4) Conduct an adjudicative proceeding for the presentation of evidence on the application;

(5) Conduct one or more sessions for the taking of public testimony concerning the proposed project;

(6) Consider public comments received;

(7) Consider any laws or ordinances, rules or regulations, which may be preempted by certification.

The council, when fully satisfied that all issues have been adequately reviewed, will consider and by majority decision will ((~~act on the question of approval or rejection of an~~)) make a council recommendation as to the disposition of the application.

OTS-5582.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-18-020 Governing procedure. The following procedures shall apply to proceedings under the Open Public Meetings Act, chapter 42.30 RCW, and rule-making proceedings under the Administrative Procedure Act, chapter 34.05 RCW:

(1) A majority of the voting council members constitutes a quorum for the conduct of council business.

(2) All council decisions shall be transacted by motion. Motions may be made by any council member and shall require a second.

(3) Voting on all motions shall be by voice vote unless a division is called for, in which case the chair shall call the roll by agency and record the votes of each voting member present, "yea" or "nay."

(4) The order of business shall be conducted as prescribed by the agenda.

(a) The ((~~council manager~~)) director shall prepare each meeting's agenda in consultation with the chair.

(b) The council may modify a meeting's agenda.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-18-050 Open Public Meetings Act proceedings. The following requirements apply to those portions of the council's business that fall within the scope of the Open Public Meetings Act, chapter 42.30 RCW:

(1) Other than executive sessions, the council's meetings are open to the public.

(2) Regular meetings. Because the council does not hold meetings in accordance with a periodic schedule declared by statute or rule, the council's meetings are not "regular meetings" within the meaning of the Open Public Meetings Act.

(3) Special meetings.

(a) The chair or a majority of the voting members of the council may call a special meeting at any time in accordance with RCW 42.30.080 by delivering written notice personally ((~~or~~)), by mail, or by email to each council member; and to each local newspaper of general circulation and to each local radio or television station which has on file a written request to be notified of such special meeting or of all special meetings.

(b) Such notice must be delivered personally ((~~or~~)), by mail, or by email and posted on the agency's website at least ((~~twenty-four~~)) 24 hours before the time of such meeting as specified in the notice.

(c) The call and required notices shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body.

(d) Such written notice may be dispensed with ((~~as to any~~)) if a member ((~~who at or prior to the time the meeting convenes files~~)) submits a written waiver of notice with the council ((~~manager a written~~

~~waiver of notice. Such waiver may be given by telegram~~)) director at or prior to the time the meeting convenes. Such written notice may also be dispensed with ((~~as to any~~)) if a member who is actually present ((~~at the meeting~~)) at the time ((~~it~~)) the meeting convenes.

(e) The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, or when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage, or when the required notice cannot be posted or displayed with reasonable safety.

((~~(b)~~)) (f) In addition to the special meeting notice requirements under RCW 42.30.080 described in ((~~subsection (4) of~~)) this section, the council shall, on or before January of each year, fix the time and place of the special meetings it proposes to hold during the upcoming calendar year and publish a schedule of those meetings in the *Washington State Register*. The council need not publish in the Register notice of any change from such meeting schedule although it may, in its discretion, elect to do so. In addition to the scheduled special meetings published in the *Washington State Register*, the council may hold other special meetings without publication in the Register.

(4) Executive sessions. The chair or a majority of the voting members of the council may call an executive session at any time in accordance with RCW 42.30.110.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-18-090 Adjudicative proceedings. Adjudicative proceedings required by RCW 80.50.090((~~(3)~~)) (4) shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and chapter 463-30 WAC.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-18-100 Rule-making proceedings. Rule-making proceedings shall be governed by the Administrative Procedure Act, chapters 34.05 RCW and 463-34 WAC.

OTS-5583.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-22-020 Potential site study request—Where submitted. Requests shall be submitted to the energy facility site evaluation council in writing at the council office ((~~in writing~~)), by mail, or by email.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-22-030 Potential site study—Fee. An initial fee of $10,000 shall accompany the study request and shall be a condition precedent to any action by the council. Payment shall be ((~~made by a cashier's check payable to the state treasurer~~)) deposited into the council's account created in RCW 80.50.390.

AMENDATORY SECTION (Amending Order 106, filed 11/4/76)

WAC 463-22-070 Independent consultant study—No preliminary approval. Nothing stated or recommended by the consultant, either during the study stage or in its report, shall be interpreted as a preliminary ((~~approval or disapproval~~)) recommendation as to the disposition of the application of the potential site by the council.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-22-100 Public information meeting. During the potential site study, the council may hold a public information meeting in the county or counties within whose boundaries the site of the proposed energy facility is located, or as close to the proposed site as practicable. The council shall publish notice of the meeting in local daily or weekly news publications, as well as on the council's website. This public information meeting shall not be in lieu of the requirements of RCW 80.50.090.

OTS-5584.1

Chapter 463-26 WAC
((~~PUBLIC~~)) INFORMATIONAL PUBLIC MEETING AND LAND USE HEARING

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-26-010 Purpose. This chapter sets forth the procedures to be followed in the conduct of ((~~the public~~)) an informational ((~~meeting~~)) public hearing pursuant to RCW 80.50.090(1) and as described in WAC 463-26-025, and the public land use hearing held pursuant to RCW 80.50.090(2).

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-26-020 Notification of local authorities. Before conducting either the informational public ((~~informational meeting~~)) hearing under RCW 80.50.090(1) or the public land use hearing under RCW 80.50.090(2), the council will notify the legislative authority in each county, city, and port district within whose boundaries the site of the proposed energy facility is located.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-26-025 ((~~Public~~)) Informational ((~~meeting~~)) public hearing. The council shall conduct at least one informational public ((~~informational meeting~~)) hearing concerning each application. At this ((~~meeting~~)) hearing, the council will present the general procedure to be followed in processing the application including a tentative sequence of council actions, the rights and methods of participation by local government in the process, and the means and opportunities for the general public to participate.

(1) The applicant shall make a presentation of the proposed project utilizing appropriate exhibits. The presentation shall include: A general description of the project and the proposed site; reasons why the proposed site or location was selected; and a summary of anticipated environmental, social, and economic impacts.

(2) The general public shall be afforded an opportunity to present written or oral comments relating to the proposed project. The comments may become part of the adjudicative proceeding record.

(3) The informational ((~~meeting~~)) public hearing shall be held in the general proximity of the proposed project as soon as practicable within ((~~sixty~~)) 60 days after receipt of an application for site certification.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-26-035 Introduction of counsel for the environment. The council shall invite the counsel for the environment to be present at the informational public ((~~informational meeting~~)) hearing. Counsel for the environment shall be introduced and afforded an opportunity to explain ((~~his or her~~)) their statutory duties under chapter 80.50 RCW.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-26-050 Purpose ((~~for~~)) of land use hearing. At the commencement of the public land use hearing, the council shall explain that the purpose of the hearing under RCW 80.50.090(2) is to determine whether at the time of application the proposed facility was consistent and in compliance with land use plans and zoning ordinances. Pur-

suant to RCW 80.50.020((~~(15)~~)) (18), "land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government under chapter((~~s~~)) 35.63, 35A.63, ((~~or~~)) 36.70, or 36.70A RCW, or as otherwise designated by chapter 325, Laws of 2007. Pursuant to RCW 80.50.020((~~(16)~~)) (30), "zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapter((~~s~~)) 35.63, 35A.63, ((~~or~~)) 36.70, or 36.70A RCW or Article XI of the state Constitution, or as otherwise designated by chapter 325, Laws of 2007.

OTS-5585.1

AMENDATORY SECTION (Amending WSR 07-21-035, filed 10/9/07, effective 11/9/07)

WAC 463-28-010 Purpose. This chapter sets forth procedures to be followed by the council in determining whether to recommend to the governor that the state preempt land use plans, zoning ordinances, or other development regulations for a ((~~site~~)) project or portions of a ((~~site for an energy facility, or alternative energy facility~~)) project for energy facilities included under RCW 80.50.060 as now or hereafter amended.

AMENDATORY SECTION (Amending WSR 78-07-036, filed 6/23/78)

WAC 463-28-020 Authority of council—Preemption by state. The authority of the council is contained in RCW 80.50.040(1) and 80.50.110(2) which provides that the state preempts the regulation and certification of the location, construction, and operational conditions of certification of the energy facilities included under RCW 80.50.060 as now or hereafter amended.

AMENDATORY SECTION (Amending WSR 07-21-035, filed 10/9/07, effective 11/9/07)

WAC 463-28-060 Adjudicative proceeding. (1) Should the council determine under WAC 463-26-110 a ((~~site~~)) project or any portions of a ((~~site~~)) project is inconsistent, it will schedule an adjudicative proceeding under chapter 463-30 WAC to consider preemption.

(2) The proceeding for preemption may be combined or scheduled concurrent with the adjudicative proceeding held under RCW 80.50.090((~~(3)~~)) (4).

(3) The council shall determine whether to recommend to the governor that the state preempt the land use plans, zoning ordinances, or other development regulations for a ((~~site~~)) project or portions of a ((~~site~~)) project for the energy ((~~facility or alternative energy resource~~)) facilities included under RCW 80.50.060 as now or hereafter amended proposed by the applicant.

AMENDATORY SECTION (Amending WSR 07-21-035, filed 10/9/07, effective 11/9/07)

WAC 463-28-070 Certification—Conditions—State/local interests. If the council approves the request for preemption, it shall include conditions in the draft certification agreement ((~~which consider~~)) to protect state ((~~or~~)), local governmental, or community interests, or overburdened communities as defined in RCW 70A.20.010 affected by the construction or operation of the ((~~energy~~)) facility ((~~or alternative energy resource~~)) and to recognize the purpose((~~s~~)) of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted pursuant to RCW 80.50.110((~~(2)~~)) as now or hereafter amended.

OTS-5586.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-060 Definitions—Persons and parties. The terms "person" and "party" when used in this chapter shall have the following meanings. The term "person" shall be defined according to RCW 80.50.020((~~(3)~~)) (19). The term "party" shall mean and be limited to the following:

(1) The "applicant" as defined in RCW 80.50.020((~~(1)~~)) (2).

(2) Each "member agency" as specified in RCW 80.50.030 (3) through (6).

(3) The "counsel for the environment" as defined in RCW 80.50.020((~~(12)~~)) (10).

(4) Each person admitted to an adjudicative proceeding as an "intervenor((~~r~~))" is a party only for the purposes, and is subject to any limitations and conditions, specified in the council order granting intervention.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-080 Commencement of adjudicative proceedings. Adjudicative proceedings shall commence upon issuance of a formal notice of hearing or prehearing conference. The notice shall be served upon all parties at least ((~~twenty~~)) 20 days in advance of the initial hearing date, unless the council finds that an emergency exists requiring the hearing or prehearing conference to be held upon less notice.

The time and place of continued hearing sessions may also be set:

(1) Upon the record without further written notice to the parties; or

(2) By letter from the council ((~~manager~~)) director; or

(3) By letter from the presiding officer.

In such instances, ((~~twenty~~)) 20 days' prior notice is not required.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-090 Publicity—Commencement of adjudicative proceedings. Upon the filing of an application for certification, the council shall prepare an appropriate statement for dissemination to the news media which shall: (1) Describe all actions taken to date regarding the proposed ((~~site~~)) project, and (2) state clearly that any person may be allowed to present timely written or oral argument for or against the proposed ((~~site~~)) project to be certified and that advance notice within a reasonable time shall be required of persons who desire status as intervenors in accordance with WAC 463-30-091.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-093 Participation by county, city, and port district representatives. In any adjudicative site certification proceeding, designated council members representing local jurisdictions may discuss and, if authorized, vote only on issues affecting their jurisdictions. Issues shall be separated for purposes of discussion and voting.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-120 Format, filing, and service of documents. (1) Format.

(a) All pleadings, motions, and other documents (including prefiled testimony) filed with the council shall be legibly written or printed. The use of letter size paper (8 1/2 by 11 inches) is mandatory. The writing or printing shall appear on two sides of the page.

(b) The requirements of (a) of this subsection are not mandatory for exhibits but the use of exhibits that comply with (a) of this subsection is encouraged if it does not impair legibility.

(2) Filing.

(a) In each case, the council will specify the number of copies required for motions, related pleadings, and exhibits which must be filed with the council.

(b) Document shall be deemed filed only upon actual receipt by the council ((~~manager~~)) director or designee during office hours.

(c) Faxes.

(i) As used in this rule, "fax" means electronic telefacsimile transmission.

(ii) Except as specified in (c)(iii) of this subsection, receipt of a document in the council's fax machine does not constitute filing.

(iii) For good cause shown, a party may request and the council ((~~manager~~)) director or designee may in his or her sole discretion grant authority to file a document by fax.

(iv) Filing by fax is perfected when a complete legible copy of the document is reproduced on the council ((~~manager's~~)) director's fax machine during the council's normal office hours, so long as the coun-

cil receives the required number of nonfaxed originals on the next successive business day. If a transmission of a document by fax commences after the council's normal office hours, the document shall be filed on the next successive business day.

(v) Any document filed by fax must be accompanied by a cover page or other form identifying the party making the transmission, listing the address, telephone, and fax number of the party, identifying the adjudicative proceeding to which the document relates, and indicating the date faxed and total number of pages included in the transmission.

(vi) The party attempting to file a document by fax bears the risk that the document will not be timely received or legibly printed, regardless of the cause. If a fax is not received in legible form, it will be considered as if it had never been sent.

(d) Email. The filing of documents with the council by electronic mail is not authorized without the express approval of the council ((~~manager~~)) director or designee and under such circumstances as the council ((~~manager~~)) director or designee allows.

(e) Filing a document with the council does not constitute service upon the office of the attorney general or any other party. Likewise, service on the office of the attorney general does not constitute a filing with the council.

(f) Applications. Applications for a site certificate shall be filed in the manner prescribed by the rules governing such applications.

(3) Service.

(a) A copy of each pleading, motion, and document filed with the council shall be simultaneously served upon each party.

(b) Service by parties.

(i) Service of pleadings, motions, and other documents by parties shall be made by delivering one copy to each party (A) in person, (B) by mail, (C) by commercial parcel delivery company, or (D) for documents not exceeding ((~~twenty-five~~)) 25 pages, if authorized by the council ((~~manager~~)) director or designee, by fax, where originals are mailed simultaneously.

(ii) Except as otherwise provided, when any party has appeared by attorney or other authorized representative, service upon such attorney or representative will be deemed valid service upon the party.

(iii) Service of documents shall be deemed complete upon (A) personal delivery, (B) deposit in the United States mail properly addressed with appropriate first-class postage prepaid, (C) acceptance for delivery by a commercial parcel delivery company, properly tendered with fees prepaid, or (D) production by the fax machine of a confirmation of transmission by fax, with simultaneous deposit of the originals in the United States mail, properly addressed with appropriate first-class postage prepaid.

(c) Service by the council. All notices, orders and other documents required to be served by the council may be served by delivery of one copy to each party (i) in person, (ii) by mail, (iii) by electronic mail, (iv) by commercial parcel delivery company, or ((~~(iv)~~)) (v) by fax, when originals are mailed simultaneously. Service of documents by the council shall be deemed complete upon (A) personal delivery, (B) deposit in the United States mail properly addressed with appropriate first-class postage prepaid, (C) acceptance for delivery by a commercial parcel delivery company, properly tendered with fees prepaid, or (D) production by the council's fax machine of a confirmation of the transmission by fax, with simultaneous deposit of the originals

in the United States mail, properly addressed with appropriate first-class postage prepaid.

(d) Certificate of service. There shall appear on or in a separate document accompanying the original of every pleading when filed with the council in accordance with this subsection, either an acknowledgment of service, or the following certificate:

"I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by authorized method of service pursuant to WAC 463-30-120(3).

Dated at ..... this .... day of ....
(signature) .....

(4) Courtesy copies. Parties are encouraged to send courtesy copies of documents to the council and all other parties via electronic mail.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-200 Subpoenas—Practice. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446.

(2) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under ((~~his or her~~)) their control at the time and place set for the hearing.

(3) A subpoena may be served by any suitable person over ((~~eighteen~~)) 18 years of age, by exhibiting and reading it to the witness, or by giving ((~~him or her~~)) them a copy thereof, or by leaving such copy at the place of ((~~his or her~~)) their abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

(4) The presiding officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) No subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the council or any member of the council staff. For these purposes, the council's independent consultant is deemed a member of the council staff.

(6) The council shall be responsible for paying only the witness fees of the witnesses which it subpoenas. Each subpoena shall bear the name of the party requesting or issuing the subpoena and the party responsible for paying the witness fees.

AMENDATORY SECTION (Amending WSR 90-05-018, filed 2/13/90, effective 3/16/90)

WAC 463-30-230 Official notice. (1) Upon written or oral motion, the council may officially notice:

(a) Any judicially cognizable facts;

(b) Technical or scientific facts within the council's specialized knowledge; and

(c) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

(2) Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed.

(3) A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-251 Alternative dispute resolution. The council supports parties' informal efforts to resolve disputes when doing so is lawful and consistent with the public interest. Alternative dispute resolution (ADR) includes any mechanism to resolve disagreements, in whole or in part.

(1) Forms of ADR. Parties may agree to negotiate with other parties at any time without council oversight. The council may direct parties to meet or consult as provided in subsection (2) of this section, or may establish or approve a collaborative process as provided in subsection (3) of this section. The council may assign a mediator or facilitator to assist the parties. The council may also assign an arbitrator whose decision is subject to council review.

(2) Settlement conference. The council may invite or direct the parties to confer among themselves or with a designated person. Settlement conferences must be informal and without prejudice to the rights of the parties.

(3) Collaborative.

(a) ((~~Defined; membership.~~)) Definition. A collaborative is a form of ADR and is a council-sanctioned negotiation in which interested parties work with each other and representatives of council staff to achieve consensus on one or more issues assigned by the council or identified by the collaborative participants.

(b) Membership. Any interested party whose interests may be substantially affected by the result of the collaborative must be given an opportunity to participate. Collaborative participants must inform the council and seek approval if a collaborative changes its membership or redefines the issues it will address.

((~~(b)~~)) (c) Communication with council. Communication between the council and collaborative participants may be through council staff assigned to serve as a third-party neutral in the collaborative, or through the council ((~~manager~~)) director, subject to agreement among the participants to the form and substance of any such communication.

(4) ADR guidelines. In any ADR process, the following apply unless all participants agree otherwise:

(a) The parties, as their first joint act, will consider any guidelines or directions by the council((~~,~~)) and determine the ground rules governing the negotiations;

(b) No statement, admission, or offer of settlement made during negotiations is admissible in evidence in any formal hearing before the council without the consent of the participants or unless necessary to address the process of the negotiations;

(c) To the extent permitted by law, parties may agree that information exchanged exclusively within the context of settlement negotiations will be treated as confidential as provided in a council protective order; and

(d) Participants in a council-sanctioned ADR process must periodically advise any nonparticipating parties and the council of any substantial progress made toward settlement. Participants must immediately advise the council if a council-sanctioned ADR process is without substantial prospects of resolving the issue or issues under negotiation.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-270 Prehearing conference. (1) The council upon its own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing conference or conferences to consider:

(a) Simplification of issues;

(b) The necessity or desirability of amendments to the pleadings;

(c) The possibility of obtaining stipulations, admissions of fact, and admissions of the genuineness of documents which will avoid unnecessary proof;

(d) Limitations on the number and consolidation of the examination of witnesses;

(e) Procedural matters;

(f) Distribution of written testimony and exhibits to the parties prior to the hearing;

(g) The disposition of petitions for leave to intervene in the proceeding filed pursuant to WAC 463-30-091 may be ruled upon at a prehearing conference;

(h) Such other matters as may aid in the disposition or settlement of the proceeding including scheduling the hearing and determination of the sequence of the subject matter.

(2) Prehearing conferences may be held by telephone conference call or at a time and place specified by the council.

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, the agreements made by the parties concerning all of the matters considered, and other matters as appropriate. If no objection to the order is filed within ((~~ten~~)) 10 days after the date the order is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(4) In any proceeding, the council may conduct a conference prior to the taking of testimony, or may recess the hearing for such confer-

ence, for the purpose of carrying out the purpose of this section. The council shall state on the record the results of such conference.

(5) Nothing in this section shall be construed to limit the right of the council to order a prehearing conference or other settlement procedure prior to issuance of a notice of hearing.

AMENDATORY SECTION (Amending WSR 98-01-083, filed 12/12/97, effective 1/12/98)

WAC 463-30-300 Hearing schedule guidelines. In any adjudicative site certification proceeding the council shall, after consultation with the parties, schedule the hearing process so that the following general subject areas may be heard separately at specified times, to the extent they are in issue:

(1) The description of the particular ((~~energy facility and the proposed site.~~)) project;

(2) Consistency of the proposal with zoning and land use regulations((~~.~~))*;*

(3) Physical site suitability and related safety considerations((~~.~~))*;*

(4) NPDES, PSD, or other permits((~~.~~))*;*

(5) On-site and local impacts (physical): Such as aquatic, terrestrial and atmospheric((~~.~~))*;*

(6) On-site and local impacts (societal): Such as housing, services, recreation, economics, transportation, health, and tax base((~~.~~))*;*

(7) Peripheral area impacts (all categories)((~~.~~))*;*

(8) Adverse impacts minimization and consideration of conditions of certification.

At the commencement of the hearing, the council shall publicly announce the proposed schedule by which the hearing is to be conducted. The council may alter the schedule.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-30-335 Petition for reconsideration of recommendations to the governor. A petition for reconsideration of a recommendation to the governor shall be filed with the council ((~~manager~~)) director.

(1) The petition for reconsideration shall be filed with the council within ((~~twenty~~)) 20 days of the date of service of the recommendation to the governor, unless a different place and time limit for filing the petition are specified in the recommendation to the governor in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed.

(2) The petition for reconsideration shall specify the challenged portions of the recommendation to the governor and shall refer to the evidence of record and legal authority which is relied upon to support the petition.

(3) Any party may file an answer to a petition for reconsideration. The answer shall be filed with the council manager within ((~~fourteen~~)) 14 days after the date of service of the petition and

copies of the answer shall be served upon all other parties or their representatives at the time the answer is filed.

OTS-5587.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-34-060 Petitions for rule making—Disposition. In accordance with RCW 34.05.330 and WAC 82-05-040, within ((~~sixty~~)) 60 days after receipt of the petition, the council shall either initiate rule-making proceedings or deny the petition in writing, stating its reasons for the denial((~~, and serve petitioner with a copy, or initiate rule-making proceedings~~)) and specifically addressing the concerns stated in the petition. Where appropriate, the council may indicate alternative means by which the agency will address the concerns raised in the petition.

OTS-5588.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-43-020 Standard application required. An applicant seeking expedited processing shall submit an application for ((~~site~~)) certification of any facility pursuant to chapter 80.50 RCW, fees, and a request for expedited processing as required by RCW 80.50.075.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-43-025 Environmental checklist required. An applicant seeking expedited processing shall submit a completed SEPA environmental checklist with an application for ((~~site~~)) certification unless the council finds the proposal is categorically exempt.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-43-030 Eligible proposals. An application may be expedited when the council finds:

(1) The environmental impact of the proposed ((~~energy~~)) facility is not significant or will be mitigated to a nonsignificant level under the State Environmental Policy Act, chapter 43.21C RCW; and

(2) The project is found to be consistent and in compliance with city, county, or regional land use plans or zoning ordinances.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-43-040 Prior to making a determination of eligibility for expedited processing. ((~~The council~~)) Prior to making a determination of eligibility for expedited processing, the council shall:

(1) Conduct ((~~a public~~)) an informational ((~~meeting~~)) public hearing in the county of the proposed ((~~site~~)) facility within ((~~sixty~~)) 60 days of receipt of an application to provide information to the public concerning the nature and purpose of the ((~~energy~~)) facility and the review process to be undertaken by the council and to provide an opportunity for the public to present its views;

(2) Determine at a public hearing within ((~~sixty~~)) 60 days of receipt of an application if the proposed site is consistent and in compliance with city, county, or regional land use plans and zoning ordinances;

(3) Review the application pursuant to WAC 463-43-030; in making its review, the council may engage pursuant to RCW 80.50.071 (1) ((~~(a)~~)) an independent consultant to provide an assessment of the application and environmental checklist and to conduct any special study deemed necessary by the council; and

(4) If applicable, initiate processing of:

(a) A NPDES application in accordance with chapter 463-76 WAC;

(b) An air emissions or PSD permit application in accordance with 463-78 WAC;

(c) Other such authorizations or permits as may be required by law or rule and necessary for construction and operation of the project.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-43-050 Expedited processing determination. Following the review of an application, environmental checklist, and land use hearing and within ((~~one hundred twenty~~)) 120 days of receipt of an application or such later time as is mutually agreed by the applicant and the council, the council by order will grant expedited processing for an application when it has found that:

(1) The proposed site is consistent and in compliance with city, county, or regional land use plans((~~,~~)) and zoning ordinances; and

(2) The environmental impacts are not significant or may be mitigated to nonsignificant level under RCW 43.21C.031.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-43-060 Effect of expedited processing. For an application granted expedited processing under WAC 463-43-050, the council shall not:

(1) Conduct any further review of an application by an independent consultant; however, at the direction of the council an independent consultant may prepare air or water discharge permits or other ancillary permits or studies that may be needed as part of a recommendation to the governor;

(2) Hold an adjudicative proceeding under chapter 34.05 RCW; and

(3) Continue an adjudicative proceeding that has commenced.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-43-070 Expedited application processing. The council will prescribe the form, content, and necessary supporting documentation for site certification during council meetings. All interested persons and the counsel for the environment shall be afforded an opportunity to make presentations on the matters herein.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-43-080 Recommendation—Transmittal to governor. Within ((~~sixty~~)) 60 days following the granting of expedited processing or such later time as is mutually agreed by the applicant and the council, the council shall forward its recommendation, and if the recommendation is for approval, the council will also forward a copy of a draft site certification agreement to the governor.

OTS-5589.1

AMENDATORY SECTION (Amending WSR 84-19-031, filed 9/14/84)

WAC 463-47-050 Designation of decision maker. Within the energy facility site evaluation council, the decision maker is the council.

AMENDATORY SECTION (Amending WSR 92-09-013, filed 4/2/92, effective 5/3/92)

WAC 463-47-051 Designation of responsible official. Within the energy facility site evaluation council, the responsible official is the council ((~~manager~~)) director.

AMENDATORY SECTION (Amending WSR 84-19-031, filed 9/14/84)

WAC 463-47-080 Mitigated DNS. (1) An applicant may ask the council whether issuance of a DS is likely for a proposal. This request for early notice must:

(a) Be written;

(b) Follow submission of an application and environmental checklist for a nonexempt proposal for which the council is lead agency; and

(c) Precede the council's actual threshold determination for the proposal.

(2) The council shall respond to the request within ((~~ten~~)) 10 working days of receipt of the letter; the response shall:

(a) Be written;

(b) State whether the council is considering issuance of a DS;

(c) Indicate the general or specific area(s) of concern that led the council to consider a DS; and

(d) 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 council shall not continue with the threshold determination until after 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 council will make its threshold determination based on the changed or clarified proposal.

(a) If the council'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 council shall issue a determination of nonsignificance and circulate the DNS for comments as in WAC ((~~197-11-350~~)) 197-11-340(2).

(b) If the council indicated general or specific areas of concern((~~,~~)) but did not indicate specific mitigation measures that would allow it to issue a DNS, the council shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.

(5) The council 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 council shall issue a DNS and circulate it for review ((~~under~~)) as in WAC ((~~197-11-350~~)) 197-11-340(2).

(6) When an applicant changes or clarifies the proposal, the clarifications 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 council may require the applicant to submit a new checklist.

(7) The council may change or clarify features of its own proposals before making the threshold determination.

(8) The council's written response under subsection (2) of this section shall not be construed 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 council to consider the clarifications or changes in its 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, including enforcement of the permit or other approval. Unless the council'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.

AMENDATORY SECTION (Amending WSR 07-21-035, filed 10/9/07, effective 11/9/07)

WAC 463-47-090 EIS preparation. (1) Preparation of draft and final EISs, supplemental EISs (SEISs), or addenda is the responsibility of the council. The responsible official shall be satisfied that these documents comply with these rules and chapter 197-11 WAC prior to issuance.

(2) The council has the following options for draft and final EISs, SEISs, or addenda preparation:

(a) The council prepares its own documents.

(b) The council's independent consultant prepares any or all of the documents under the supervision of the responsible official.

(c) The council requires the applicant to prepare the documents with oversight from the responsible official.

(3) If the council prepares its own draft and final EISs, SEISs, or addenda, or its independent consultant prepares them, the council can require an applicant to provide information that the council or independent consultant does not possess, including specific investigations.

(4) The applicant shall bear the expense of the draft and final EISs, SEISs, or addenda preparation, but the consultant will work directly for the council.

(5) Normally, the council will have the documents printed and distributed.

(6) Whenever someone other than the council prepares a draft or final EISs, SEISs, or addenda, the responsible official:

(a) May direct the areas of research and examination to be undertaken and the content and organization of the document.

(b) Shall initiate and coordinate scoping, ensuring that the individuals preparing the documents receive all substantive information submitted by any agency or person.

(c) Shall assist in obtaining information on file with other agencies that is needed by the persons preparing the document.

(d) Shall allow the person preparing the document access to council records relating to the document (under chapter ((~~42.17~~)) 42.56 RCW—Public ((~~disclosure and public~~)) Records ((~~law~~)) Act).

AMENDATORY SECTION (Amending WSR 84-19-031, filed 9/14/84)

WAC 463-47-100 Public notice requirements. (1) The council shall give public notice when issuing a DNS under WAC ((~~197-11-350(2)~~)) 197-11-340, a scoping notice under WAC ((~~173-802-090~~)) 197-11-360, or a draft EIS under WAC 197-11-455.

(2) Whenever possible, the council shall integrate the public notice required under this section with existing notice procedures for the council's review of an application.

(a) When more than one permit required from the council has public notice requirements, the notice procedures that would reach the widest audience should be used, if possible.

(b) If the public notice requirements for the permit or certification must be completed at a specific time in the permitting process and that timing does not coincide with the timing requirements for SEPA public notice, the council must use one or more public notice methods in subsection (4) of this section.

(c) If there are no public notice requirements for any of the permits required for a proposal, the council must use one or more public notice methods in subsection (4) of this section.

(3) The council may require an applicant to perform the public notice requirement at his or her expense.

(4) The council shall use one or more of the following methods of public notice, 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 certification required from the council and, public interest expressed in the proposal:

(a) Mailing to persons or groups who have expressed interest in the proposal, that type of proposal, or proposals in the geographic area in which the proposal will be located, constructed and operated if approved;

(b) Publication in a newspaper of general circulation in the area in which the proposal will be located, constructed, and operated; and/or

(c) Posting the property, for site specific proposals.

AMENDATORY SECTION (Amending WSR 07-21-035, filed 10/9/07, effective 11/9/07)

WAC 463-47-110 Policies and procedures for conditioning or denying permits or other approvals. (1)(a) The overriding policy of the council is to avoid or mitigate adverse environmental impacts which may result from the council's decisions.

(b) The council shall use all practicable 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:

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The council 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.

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

(2)(a) When the environmental document for a proposal shows it will cause significant adverse impacts that the proponent does not plan to mitigate, the council shall consider whether:

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

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

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

(b) The council may:

(i) Condition the approval or recommendation for approval for a proposal if mitigation measures are reasonable and capable of being accomplished and the proposal is inconsistent with the policies in subsection (1) of this section.

(ii) Reject or recommend rejection of the application if reasonable mitigation measures are insufficient to mitigate significant adverse environmental impacts and the proposal is inconsistent with the policies in subsection (1) of this section.

(c) The procedures in WAC 197-11-660 must also be followed when conditioning, denying or recommending permits, or rejecting applications.

AMENDATORY SECTION (Amending WSR 07-21-035, filed 10/9/07, effective 11/9/07)

WAC 463-47-140 Responsibilities of the council's responsible official. The EFSEC ((~~manager~~)) director shall be responsible for the following:

(1) Coordinating activities to comply with SEPA and encouraging consistency in SEPA compliance.

(2) Providing information and guidance on SEPA and the SEPA rules to council, council staff, groups, and citizens.

(3) Reviewing SEPA documents falling under council interests and providing the department of ecology with comments.

(4) Maintaining the files for EISs, DNSs, ((~~and~~)) scoping notices, and related SEPA matters.

(5) Writing and/or coordinating EIS preparation, including scoping and the scoping notice, making sure to work with interested agencies.

(6) Publishing and distributing its SEPA rules and amending its SEPA rules, as necessary.

(7) Fulfilling the council's other general responsibilities under SEPA and the SEPA rules.

OTS-5596.1

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-010 Purpose. This chapter sets rules relating to costs or charges for independent consultant studies, regular and expedited application processing, electrical transmission facility preapplication, determining compliance, and potential site studies. ((~~The department of community, trade, and economic development will provide all fiscal services for the council. For the purposes of this chapter "department" shall mean the department of community, trade, and economic development.~~))

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-020 Costs for the independent consultant studies. Pursuant to RCW 80.50.071, a deposit of ((~~twenty-five thousand dollars~~)) $50,000 for each proposed site shall accompany the application for ((~~an energy facility~~)) site certification. This charge shall be applied toward the total cost of the independent consultant study authorized by RCW 80.50.071. The determination of the total costs required for the study shall generally be as follows:

(1) The council may determine that the initial charge of ((~~twenty-five thousand dollars~~)) $50,000 is insufficient to adequately fund the study. If so, the council shall so advise the applicant and shall furnish an estimate of the supplemental costs needed to complete the study and shall direct the applicant to increase the funds on deposit to cover the anticipated costs. In no event shall the study be allowed to continue if the applicant has not agreed to pay the cost thereof and has not deposited the agreed upon funds;

(2) Should the applicant file amendments or supplements to the application or should the council find that additional study of the application is required, additional cost estimates will be prepared by the consultant and provided to the council. Upon approval of the estimate by the council, the applicant shall be advised of the additional study costs;

(3) The council shall authorize the independent consultant to initiate evaluation of the application materials or subsequently filed amendatory or supplementary materials when the applicant has paid the required costs.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-030 Costs for regular application processing. Pursuant to RCW 80.50.071, each applicant for ((~~energy facility~~)) site certification shall at the time of application submission deposit ((~~twenty thousand dollars~~)) $50,000 for costs related to processing of the application. Such processing costs shall consist of those determined by the council to be reasonable and necessary including:

(1) ((~~A hearing examiner(s)~~)) An administrative law judge(s) who may be retained by the council for the duration of the application processing period or for such portion of the processing period as the council may consider necessary;

(2) A court reporter(s) for the recording and preparation of transcripts of an adjudicative proceeding, council meetings, or public sessions which the council shall consider necessary;

(3) Additional staff salaries for those persons employed on the council staff for the duration of the application processing period; and

(4) Such overhead and support costs including wages and employee benefits, goods and services, travel expenses within the state, and miscellaneous expenses ((~~as~~)) that arise directly from application processing;

(5) The council may determine that the initial charge of ((~~twenty thousand dollars~~)) $50,000 is insufficient to fund the council costs. If so, the council shall so advise the applicant and shall request the applicant to increase the funds on deposit to cover the anticipated costs. In no event shall the processing of the application continue if the applicant has not agreed to pay the cost thereof and has not deposited the agreed upon funds.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-050 Costs for determining compliance. Pursuant to RCW 80.50.071 ((~~(1)(c)~~)) (2), each certificate holder shall pay ((~~such reasonable~~)) the actual costs ((~~as are actually and necessarily~~)) incurred by the council for inspection and determination of compliance by the certificate holder with the terms ((~~and conditions of the certificate~~)) of the certification relative to monitoring the effects of construction, operation, and site restoration of the facility.

(1) The ((~~amount of funds required to be placed on deposit by the~~)) certificate holder ((~~shall be determined by the council and deposited by the applicant~~)), within ((~~thirty~~)) 30 days of ((~~the governor's signing~~)) execution of the site certification agreement, shall deposit an amount up to $50,000, or such greater amount as specified by the council after consultation with the certificate holder.

(2) In addition to the deposit required under subsection (1) of this section, certificate holder must reimburse the council for actual expenditures that arise in administering chapter 80.50 RCW and determining compliance.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-060 Costs for ((~~potential site~~)) preliminary studies. ((~~Ten thousand dollars shall accompany the study request~~)) The council, upon agreement with any potential applicant, may conduct a preliminary study of any potential project prior to receipt of an application for site certification, pursuant to RCW 80.50.175. A fee of $10,000 for each potential project must accompany the agreement and ((~~be~~)) is a condition precedent to any action on the agreement by the council. In the event that the council determines that the initial fee of ((~~ten thousand dollars~~)) $10,000 is insufficient to adequately fund the ((~~potential site~~)) preliminary study, the council shall so advise the potential applicant and shall furnish an estimate of the supplemental funds needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-065 Costs for preapplication process for electrical transmission facilities. Pursuant to RCW 80.50.340, ((~~ten thousand dollars~~)) $10,000 shall accompany any preapplication request. If the council determines that the initial ((~~ten thousand dollars~~)) $10,000 is insufficient to adequately fund the preapplication process, the council shall so advise the potential applicant and shall provide an estimate of the supplemental cost needed to complete the study. In no event shall the study be allowed to continue if the potential applicant has not agreed to pay the cost of the study. Any unexpended funds shall be returned to the preapplicant.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-070 Failure to provide necessary costs. Failure to comply with WAC 463-58-020 through 463-58-060 shall result, in the case of an applicant, in suspension of all application processing activities or, in the case of a certificate holder, in ((~~the council's initiation of enforcement action pursuant to WAC 463-70-070~~)) suspension of the certificate. The council will require any delinquent applicant or certificate holder to show cause why the council should not suspend application processing. Following deposit of all required funds, the council shall, in the case of application processing, consider reinstatement of application processing, or in the case of a certificate holder, ((~~reconsider enforcement action~~)) reinstatement of the certificate.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-58-080 Payment, reporting, and auditing procedures. (1) The ((~~department provides all financial services for the~~)) council ((~~and will~~)) shall provide each applicant or certificate holder a statement of actual expenditures ((~~actually~~)) made during the preceding calendar quarter((~~; the statement will be~~)) in sufficient detail to explain expenditures ((~~made against the deposited funds~~)). Within ((~~thirty~~)) 30 days of the receipt of the ((~~department's statement~~)) council's invoice, the applicant or certificate holder will pay an amount necessary to restore the total amount on deposit to the level established pursuant to WAC 463-58-020 through 463-58-060.

(2) Any funds remaining unexpended shall be refunded to the certificate holder, or in the case of an applicant to the applicant or, at the applicant's option, credited against required deposits of a certificate holder.

(3) All required payments shall be ((~~payable to the state treasurer~~)) deposited into the energy facility site evaluation council account created in RCW 80.50.390. The method of payment shall be prearranged with the ((~~department~~)) council prior to submission. The ((~~department~~)) council will establish and maintain separate accounts for each application and certificate. All funds will be subject to state auditing procedures. The ((~~department~~)) council will provide copies of such audits to the affected applicants and certificate holders as they are completed by the state auditor.

OTS-5597.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-055 General—Form and number of copies. (1) Applications shall be on 8-1/2 by 11" sheets, in loose-leaf form with a hard cover binder. The applicants shall supply a sufficient number of copies of the application to the council, the number to be determined by the council in consultation with its staff, consultants, and the applicant. The applicants shall also supply two copies to each county, two copies to each city, and one copy to each port district in which the proposed project would be located. In addition, one copy shall be supplied to each intervenor on admission to the proceedings. Information later submitted shall be by page-for-page substitutions suitable for insertion in the application binder, bearing the date of the submission.

(2) An applicant shall also provide the council copies of its application in a digital format for use in personal computers. Digital format shall be determined by the council in consultation with its staff, consultants, and the applicant.

(3) At the time of submittal of the application, the applicant shall submit one copy of the applicable land use plans and zoning ordinances for the project site.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-075 General—Assurances. The application shall set forth insurance, bonding, or other arrangements proposed in order to mitigate for damage or loss to the physical or human environment caused by project construction, operation, abandonment, termination, or when operations cease at the completion of a project's life. The application shall describe the applicant's commitment to the requirements of chapter 463-72 WAC, Site restoration and preservation.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-60-101 General—Consultation. (1) Preapplication consultation. The application shall summarize all consultation that the applicant has conducted with local, state, and federal agencies and governments, Indian tribes, nonprofit organizations, and community citizen and interest groups prior to submittal of the application to the council.

(2) Meaningful involvement. The application shall describe all efforts made by the applicant to involve the public, regardless of race, ethnicity, or socioeconomic status, prior to submittal of the application to the council. The application shall also set forth information for contacting local interest and community groups to allow for meaningful involvement of all people, regardless of race, ethnicity, or socioeconomic status. For example, such information may include contacts with local minority radio stations and news publications.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-115 General—Specific contents and applicability. It is recognized that not all sections of these guidelines apply equally to all proposed energy facilities. If the applicant deems a particular section to be totally inapplicable, the applicant must justify such conclusion in response to said section. The applicant must address all sections of this chapter and must substantially comply with each section, show it does not apply, or secure a waiver from the council. Information submitted by the applicant shall be accompanied by a certification by applicant that all EFSEC application requirements have been reviewed, the data have been prepared by qualified professional personnel, and the application is substantially complete.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-60-116 General—Amendments to applications, additional studies, procedure. (1) Applications to the council for site certifi-

cation shall be complete and shall reflect the best available current information and intentions of the applicant.

(2) Amendments to a pending application must be presented to the council at least ((~~thirty~~)) 30 days prior to the commencement of the adjudicative hearing, except as noted in subsection (3) of this section.

(3) Within ((~~thirty~~)) 30 days after the conclusion of the adjudicative hearings, the applicant shall submit to the council((~~,~~)) application amendments which include all commitments and stipulations made by the applicant during the adjudicative hearings.

(4) After the start of adjudicative hearings, additional environmental studies or other reports shall be admitted only for good cause shown after petitions to the council ((~~or~~)), upon request of the council, or submitted as a portion of prefiled testimony for a witness at least ((~~thirty~~)) 30 days prior to appearance.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-135 Proposal—Legal descriptions and ownership interests. (1) Principal facility. The application shall contain a legal description of the site to be certified and shall identify the applicants and all nonprivate ownership interests in such land.

(2) Associated and transmission facilities. For those facilities described in RCW 80.50.020 ((~~(6) and (7)~~)) (4) and (29), the application shall contain the legal metes and bounds description of the preferred centerline of the corridor necessary to construct and operate the facility contained therein, the width of the corridor, or variations in width between survey stations if appropriate, and shall identify the applicant's and others' ownership interests in lands over which the preferred centerline is described and of those lands lying equidistant for 1/4 mile either side of such center line.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-155 Proposal—Energy transmission systems. The application shall identify the federal, state, and industry criteria used in the conceptual design, route selection, and construction for all facilities identified in RCW 80.50.020 ((~~(6) and (7)~~)) (4) and (29), and shall indicate how such criteria are met.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-60-160 Proposal—Electrical transmission facilities. (1) Prior to submitting an application for site certification for an electric transmission facility under RCW 80.50.060((~~(3)~~)) (2) an applicant shall follow the procedure as set in chapter 463-61 WAC.

(2) An application for an electric transmission facility shall include the information required by this chapter unless the requirement may not be applicable to such a facility.

(3) An application for an electrical transmission facility shall include the results of any preapplication negotiations, including any agreements between the applicant and cities, towns, or counties where the electrical transmission facility is proposed to be located.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-165 Proposal—Water supply. (1) Water intake and conveyance facilities. The application shall describe the location and type of water intakes, water lines, pipelines and water conveyance systems, and other associated facilities required for providing water to the energy facility for which certification is being requested.

(2) Water supply and usage alternatives.

(a) The applicant shall consider water supply alternatives, including use of reclaimed water, water reuse projects, and conservation methods. The application shall describe all supply alternatives considered, including the associated cost of implementing such alternatives, and the resulting benefits and penalties that would be incurred.

(b) The application shall include detailed information regarding using air cooling as an alternative to consumptive water use, including associated costs.

(c) The application shall describe water conservation methods that will be used during construction and operation of the facility.

(3) Water rights and authorizations. An applicant proposing to use surface or groundwater for the facility shall describe the source and the amount of water required during construction and operation of the energy facility and shall do one or more of the following:

(a) Submit a water use authorization or a contractual right to use water supplied by a municipal corporation or other water purveyor; or

(b) Submit a water right permit or water right certificate issued by the department of ecology for the proposed facility in an amount sufficient to meet the need of the facility. If the permit and/or certificate has been issued five years prior to the submittal date, the applicant shall provide evidence that the water right permit is in good standing, or that the certificate has not been relinquished through nonuse; or

(c) For applications for new surface or groundwater withdrawals, or applications for water right changes or transfers of existing rights or certificates for withdrawal, the applicant shall submit appropriate application(s) for such rights, certificates or changes in rights and certificates, to the department of ecology prior to submittal of the application for site certification to the council. The application for site certification shall include report(s) of examination, identifying the water rights, or water right changes, submitted to and under review by the department of ecology, the quantities of water in gallons per minute and acre feet per year that are eligible for change, together with any limitations on use, including time of year. The report(s) of examination shall also include comments by the

Washington state department of fish and wildlife with respect to the proposed water right applications under review by the department of ecology.

(d) Mitigation. The application shall contain a description of mitigation proposed for water supply, and shall include any and all mitigation required by the department of ecology pursuant to the review of water rights or certificates, or changes to water rights or certificates required in (c) of this subsection.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-185 Proposal—Characteristics of aquatic discharge systems. (1) Where discharges into a watercourse are involved, the applicant shall identify outfall configurations including:

(a) Location(s) of water discharge pipeline or conveyance system, the outfall, and any associated dilution systems;

(b) Average and maximum discharge rate;

(c) Extent of the dilution zone if necessary;

(d) Width of the receiving water body at the outfall location;

(e) Dimension(s), and rated and maximum carrying capacity of the water discharge pipeline or conveyance system, the outfall structure and any associated dilution systems;

(f) Depth and width of the receiving water body at the discharge point;

(g) Average, minimum and maximum water velocity of the receiving water body at the discharge point, and the times when the maximum and minimum flows occur.

(2) Where discharges are into a ((~~water-course~~)) watercourse via an existing discharge system for which certification is not being sought, the applicant shall also provide the following information:

(a) Ownership of the discharge conveyance system;

(b) A description of, and the terms and duration contained in, the use agreement that allows the applicant to use the discharge conveyance system;

(c) Identification of the party responsible for operation and maintenance of the discharge conveyance system;

(d) NPDES or state wastewater discharge permit number for the existing system discharge;

(e) Location of connection point into the existing discharge system;

(f) Diameter and rated and maximum volume capacity of the wastewater line or conveyance system into which discharge is being proposed;

(g) Existing, rated and maximum flow levels in the wastewater line or conveyance system into which the discharge is being proposed;

(h) Where a discharge is proposed to a publicly owned treatment works, in addition to the items provided in subsections (1) and (2) of this section, the applicant shall provide an engineering analysis showing that the proposed discharge will not cause the waste treatment facility to exceed capacities or to violate its authorized discharge limits, including both the quality of the discharge and the volume of the discharge, or to violate the permits governing its operation.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-195 Proposal—Wastewater treatment. (1) The application shall describe each wastewater source associated with the facility and for each source, the applicability of all known, available, and reasonable methods of wastewater control and treatment to ensure it meets current waste discharge and water quality regulations.

(2) Where wastewater control involves collection and retention for recycling and/or resource recovery, the applicant shall show in detail the methods selected, including at least the following information:

(a) Waste source(s);

(b) Average and maximum daily amounts and composition of wastes;

(c) The type of storage vessel and the storage capacity and duration; and

(d) Any bypass or overflow facilities to the wastewater treatment system(s) or the receiving waters.

(3) Where wastewaters are discharged into receiving waters, the applicant shall provide a detailed description of the proposed treatment system(s), including:

(a) Appropriate flow diagrams and tables showing the sources of all tributary waste streams((÷));

(b) Their average and maximum daily amounts and composition;

(c) Individual treatment units and their design criteria;

(d) Major piping (including all bypasses); and

(e) Average and maximum daily amounts and composition of effluent(s).

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-205 Proposal—Spillage prevention and control. The application shall describe all spillage prevention and control measures to be employed regarding accidental and/or unauthorized discharges or emissions, relating such information to specific facilities, including but not limited to locations, amounts, storage duration, mode of handling, and transport. The application shall describe in general detail the content of a Construction Phase and an Operational Phase Spill Prevention, Control, and Countermeasure Plan (chapter 40 C.F.R. Part 112 and Hazardous Waste Management Plan) that will be required prior to commencement of construction.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-225 Proposal—Emission control. (1) The application shall describe and quantify all construction and operational air emissions subject to regulation by local, state, or federal agencies.

(2) The application shall identify all construction and operational air emissions that are exempt from local, state, and federal regulation, and the regulatory basis for the exemption.

(3) The applicant shall demonstrate that the highest and best practicable treatment for control of emissions will be utilized in facility construction and operation.

(4) The application shall identify all state and federal air emission permits that would be required after approval of the site certification agreement by the governor, and the timeline for submittal of the appropriate applications for such permits.

(5) In the case of ((~~fossil-fuel fired~~)) fossil-fueled energy plants, the application shall describe and quantify all emissions of greenhouse gases.

(6) In the case of a nuclear-fueled plant, the applicant shall address optional plant designs as these may relate to gaseous emissions.

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-60-232 Proposal—Greenhouse gases emissions performance standards. For baseload electric generating facilities, the application shall provide information required by((~~,~~)) chapter 463-85 WAC and describe how the requirements of chapter 463-85 WAC will be met.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-255 Proposal—Construction methodology. The application shall describe in detail the construction procedures, including major equipment, proposed for any construction activity within watercourses, wetlands, and other sensitive areas.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-275 Proposal—Security concerns. The application shall describe the means employed for protection of the facility from sabotage, terrorism, vandalism, and other security threats.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-285 Proposal—Study schedules. The application shall furnish a brief description of all present or projected schedules for additional environmental studies. The studies' descriptions should outline their scope and indicate projected completion dates.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-60-297 Proposal—Pertinent federal, state, and local requirements. (1) Each application shall include a list of all applicable federal, state, and local statutes, ordinances, rules, permits, and required use authorizations (i.e., leases, easements, rights of way, or similar authorizations) that would apply to the project if it were not under council jurisdiction. For each federal, state, or local requirement, the applicant shall describe how the project would comply or fail to comply. If the proposed project does not comply with a specific requirement, the applicant shall discuss why such compliance should be excused.

(2) Inadvertent failure by the applicant to discover and list a pertinent requirement shall not invalidate the application, but may delay the council's processing of the application.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-302 Natural environment—Earth. (1) The applicant shall provide detailed descriptions of the existing environment, project impacts, and mitigation measures for the following:

(a) Geology. The application shall include the results of a comprehensive geologic survey showing conditions at the site, the nature of foundation materials, and potential seismic activities.

(b) Soils. The application shall describe all procedures to be utilized to minimize erosion and other adverse consequences during the removal of vegetation, excavation of borrow pits, foundations and trenches, disposal of surplus materials, and construction of earth fills. The location of such activities shall be described, and the quantities of material shall be indicated.

(c) Topography. The application shall include contour maps showing the original topography and any changes likely to occur as a result of energy facility construction and related activities. Contour maps showing proposed shoreline or channel changes shall also be furnished.

(d) Unique physical features. The application shall list any unusual or unique geologic or physical features in the project area or areas potentially affected by the project.

(e) Erosion/enlargement of land area (accretion). The application shall identify any potential for erosion, deposition, or change of any land surface, shoreline, beach, or submarine area due to construction activities, placement of permanent or temporary structures, or changes in drainage resulting from construction or placement of facilities associated with construction or operation of the proposed energy project.

(2) The application shall show that the proposed energy facility will comply with the state building code provisions for seismic hazards applicable at the proposed location.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-322 Natural environment—Water. (1) The application shall provide detailed descriptions of the affected natural water environment, project impacts, and proposed mitigation measures, and shall demonstrate that facility construction and/or operational discharges will be compatible with and meet state water quality standards.

(2) Surface water movement/quality/quantity. The application shall set forth all background water quality data pertinent to the site, and hydrographic study data and analysis of the receiving waters within ((~~one-half~~)) 1/2 mile of any proposed discharge location with regard to: Bottom configuration; minimum, average, and maximum water depths and velocities; water temperature and salinity profiles; anticipated effluent distribution, dilution, and plume characteristics under all discharge conditions; and other relevant characteristics which could influence the impact of any wastes discharged thereto.

(3) Runoff/absorption. The application shall describe how surface water runoff and erosion are to be controlled during construction and operation((~~,~~)) and how runoff can be reintroduced to the ground for return to the groundwater supply((~~,~~)) and to assure compliance with state water quality standards.

(4) Floods. The application shall describe potential for flooding, identify the five, ((~~fifty~~)) 50, and ((~~one hundred~~)) 100-year flood boundaries, and describe possible flood impacts at the site, as well as possible flood-related impacts both upstream and downstream of the proposed facility as a result of construction and operation of the facility and all protective measures to prevent possible flood damage to the site and facility.

(5) Groundwater movement/quantity/quality. The application shall describe the existing groundwater movement, quality, and quantity on and near the site, and in the vicinity of any points of water withdrawal associated with water supply to the project. The application shall describe any changes in surface and groundwater movement, quantity, quality or supply uses which might result from project construction or operation and from groundwater withdrawals associated with water supply for the project, and shall provide mitigation for adverse impacts that have been identified.

(6) Public water supplies. The application shall provide a detailed description of any public water supplies which may be used or affected by the project during construction or operation of the facility.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-332 Natural environment—Habitat, vegetation, fish, and wildlife. The application shall describe all existing habitat types, vegetation, wetlands, fish, wildlife, and in-stream flows on and near the project site which might reasonably be affected by construction, operation, decommissioning, or abandonment of the energy facility and any associated facilities. For purposes of this section, the term "project site" refers to the site for which site certifica-

tion is being requested, and the location of any associated facilities or their right of way corridors, if applicable. The application shall contain the following information:

(1) Assessment of existing habitats and their use. The application shall include a habitat assessment report prepared by a qualified professional. The report shall contain, but not be limited to, the following information:

(a) A detailed description of habitats and species present on and adjacent to the project site, including identification of habitats and species present, relative cover, density, distribution, and health and vigor;

(b) Identification of any species of local importance, priority species, or endangered, threatened, or candidate species that have a primary association with habitat on or adjacent to the project site;

(c) A discussion of any federal, state, or local special management recommendations, including department of fish and wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;

(2) Identification of energy facility impacts. The application shall include a detailed discussion of temporary, permanent, direct, and indirect impacts on habitat, species present and their use of the habitat during construction, operation, and decommissioning of the energy facility. Impacts shall be quantified in terms of habitat acreage affected, and numbers of individuals affected, threatened, or removed. The discussion of impacts shall also include:

(a) Impacts to water quality, stream hydrology, and in-stream flows;

(b) Impacts due to introduction, spread, and establishment of noxious or nonnative species;

(c) Impacts and changes to species' communities adjacent to the project site;

(d) Impacts to fish and wildlife migration route((~~s~~));

(e) Impacts to any species of local importance, priority species, or endangered, threatened, or candidate species;

(f) Impacts due to any activities that may otherwise confuse, deter, disrupt, or threaten fish or wildlife;

(g) An assessment of risk of collision of avian species with any project structures, during day and night, migration periods, and inclement weather;

(h) An assessment for the potential of impacts of hazardous or toxic materials spills on habitats and wildlife.

(3) Mitigation plan. The application shall include a detailed discussion of mitigation measures, including avoidance, minimization of impacts, and mitigation through compensation or preservation and restoration of existing habitats and species, proposed to compensate for the impacts that have been identified. The mitigation plan shall also:

(a) Be based on sound science;

(b) Address all best management practices to be employed and setbacks to be established;

(c) Address how cumulative impacts associated with the energy facility will be avoided or minimized;

(d) Demonstrate how the mitigation measures will achieve equivalent or greater habitat quality, value, and function for those habitats being impacted, as well as for habitats being enhanced, created, or protected through mitigation actions;

(e) Identify and quantify level of compensation for impacts to, or losses of, existing species due to project impacts and mitigation measures, including benefits that would occur to existing and new species due to implementation of the mitigation measures;

(f) Address how mitigation measures considered have taken into consideration the probability of success of full and adequate implementation of the mitigation plan;

(g) Identify future use of any man-made ponds or structures created through construction and operation of the facility or associated mitigation measures, and associated beneficial or detrimental impacts to habitats, fish, and wildlife;

(h) Discuss the schedule for implementation of the mitigation plan, prior to, during, and post-construction and operation;

(i) Discuss ongoing management practices that will protect habitat and species, including proposed monitoring and maintenance programs;

(j) Mitigation plans should give priority to proven mitigation methods. Experimental mitigation techniques and mitigation banking may be considered by the council on a case-by-case basis. Proposals for experimental mitigation techniques and mitigation banking must be supported with analyses demonstrating that compensation will meet or exceed requirements giving consideration to the uncertainty of experimental techniques, and that banking credits meet all applicable state requirements.

(4) Guidelines review. The application shall give due consideration to any project-type specific guidelines established by state and federal agencies for assessment of existing habitat, assessment of impacts, and development of mitigation plans. The application shall describe how such guidelines are satisfied. For example, wind generation proposals shall consider *Washington state department of fish and wildlife Wind Power Guidelines*, August 2003, or as hereafter amended. Other types of energy facilities shall consider department of fish and wildlife Policy M-5002, dated January 18, 1999, or as hereafter amended.

(5) Federal approvals. The application shall list any federal approvals required for habitat, vegetation, fish, and wildlife impacts and mitigation, status of such approvals, and federal agency contacts responsible for review.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-60-333 Natural environment—Wetlands. The application shall include a report for wetlands prepared by a qualified professional wetland scientist. For purposes of this section, the term "project site" refers to the site for which site certification is being requested, and the location of any associated facilities or their right of way corridors if applicable. The report shall include, but not be limited to, the following information:

(1) Assessment of existing wetlands present and their quality. The assessment of the presence and quality of existing wetlands shall include:

(a) A wetland delineation performed by a qualified professional according to the *Washington State Wetlands ((~~Delineation and~~)) Identi-*

fication and Delineation Manual, 1997, and associated data sheets, site maps with data plots and delineated wetlands areas, photographs, and topographic and aerial site maps.

(b) A description of wetland categories found on the site according to the Washington state wetland rating system found in *Western Washington, Ecology Publication #93-74* and *Eastern Washington, Ecology Publication 391-58*, or as revised by the department of ecology.

(c) A discussion of water sources supplying wetlands and documentation of hydrologic regime encountered.

(d) A function assessment report prepared according to the *Washington State Wetland Function Assessment Methods* to assess wetlands functions for those wetland types covered by the method, and including a description of type and degree of wetland functions that are provided.

(2) Identification of energy facility impacts. The application shall include a detailed discussion of temporary, permanent, direct, and indirect impacts on wetlands, their functions and values, and associated water quality and hydrologic regime during construction, operation, and decommissioning of the energy facility. The discussion of impacts shall also include impacts to wetlands due to proposed mitigation measures.

(3) Wetlands mitigation plan. The application shall include a detailed discussion of mitigation measures, including avoidance, minimization of impacts, and mitigation through compensation or preservation and restoration of existing wetlands, proposed to compensate for the direct and indirect impacts that have been identified. The mitigation plan shall be prepared consistent with the *Department of Ecology Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals*, 1994, as revised. The application shall also include, but not be limited to:

(a) A discussion of how standard buffer widths have been incorporated into the mitigation proposal. Variances from standard buffer widths must be supported with professional analyses demonstrating that smaller or averaged buffer widths protect the wetland functions and values based on site-specific characteristics;

(b) A demonstration of how enhancement, restoration, or compensatory mitigation actions will achieve equivalent or greater hydrologic and biological functions at the impact site, and whether any existing wetland functions would be reduced by the mitigation measures;

(c) A discussion of how standard mitigation ratios have been incorporated into the mitigation proposal. Variances from standard mitigation ratios must be supported with professional analyses demonstrating that equivalent or greater hydrologic and biological functions will be achieved;

(d) A demonstration that the mitigation actions are being conducted in an appropriate location, and that consideration was given in order of preference to: On-site opportunities; opportunities within the same subbasin or watershed assessment unit; opportunities within the same Water Resources Inventory Area (WRIA); opportunities in another WRIA;

(e) A discussion of the timing and schedule for implementation of the mitigation plan;

(f) A discussion of ongoing management practices that will protect wetlands, including proposed monitoring and maintenance programs;

(g) Mitigation plans should give priority to proven mitigation methods. Experimental mitigation techniques and mitigation banking may be considered by the council on a case-by-case basis. Proposals for

experimental mitigation techniques and mitigation banking must be supported with analyses demonstrating that compensation will meet or exceed requirements giving consideration to the uncertainty of experimental techniques, and that banking credits meet all applicable state requirements.

(4) Federal approvals. The application shall list any federal approvals required for wetlands impacts and mitigation, status of such approvals, and federal agency contacts responsible for review.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-342 Natural environment—Energy and natural resources. (1) Amount required/rate of use/efficiency. The application shall describe the rate of use and efficiency of consumption of energy and natural resources during both construction and operation of the proposed facility.

(2) Source/availability. The application shall describe the sources of supply, locations of use, types, amounts, and availability of energy or resources to be used or consumed during construction and operation of the facility.

(3) Nonrenewable resources. The application shall describe all nonrenewable resources that will be used((~~,~~)) or be made inaccessible or unusable by construction and operation of the facility.

(4) Conservation and renewable resources. The application shall describe conservation measures and/or renewable resources which will or could be used during construction and operation of the facility.

(5) Scenic resources. The application shall describe any scenic resources which may be affected by the facility or discharges from the facility.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-352 Built environment—Environmental health. (1) Noise. The application shall:

(a) Describe and quantify the background noise environment that would be affected by the energy facility. The number of locations used for assessment of the existing noise environment shall be commensurate with the type of energy facility being proposed, the impacts expected, and the presence of high-density receptor locations in the vicinity of the proposed site.

(b) Identify and quantify the impact of noise emissions resulting from construction and operation of the energy facility, using appropriate state-of-the-art modeling techniques((~~,~~)) and including impacts resulting from low frequency noise;

(c) Identify local, state, and federal environmental noise impact guidelines;

(d) Describe the mitigation measures to be implemented to satisfy WAC 463-62-030;

(e) Describe the means the applicant proposes to employ to assure continued compliance with WAC 463-62-030.

(2) Risk of fire or explosion. The application shall describe any potential for fire or explosion during construction, operation, standby or nonuse, dismantling, or restoration of the facility and what measures will be made to mitigate any risk of fire or explosion.

(3) Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials. The application shall describe any potential for release of toxic or hazardous materials to the environment and shall identify plans for complying with the federal Resource Conservation and Recovery Act and the state Dangerous waste regulations (chapter 173-303 WAC). The application shall describe the treatment or disposition of all solid or semisolid construction and operation wastes including spent fuel, ash, sludge, and bottoms, and show compliance with applicable state and local solid waste regulations.

(4) Safety standards compliance. The application shall identify all federal, state, and local health and safety standards which would normally be applicable to the construction and operation of a project of this nature and shall describe methods of compliance therewith.

(5) Radiation levels. For facilities which propose to release any radioactive materials, the application shall set forth information relating to radioactivity. Such information shall include background radiation levels of appropriate receptor media pertinent to the site. The application shall also describe the proposed radioactive waste treatment process, the anticipated release of radionuclides, their expected distribution and retention in the environment, the pathways which may become sources of radiation exposure, and projected resulting radiation doses to human populations. Other sources of radiation which may be associated with the project shall be described in all applications.

(6) Emergency plans. The application shall describe emergency plans which will be required to assure the public safety and environmental protection on and off the site in the event of a natural disaster or other major incident relating to or affecting the project as well as identifying the specific responsibilities that will be assumed by the applicant.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-362 Built environment—Land and shoreline use. (1) The application shall identify land use plans and zoning ordinances applicable to the project site.

(2) Light and glare. The application shall describe the impact of light and glare from construction and operation and shall describe the measures to be taken in order to eliminate or lessen this impact.

(3) Aesthetics. The application shall describe the aesthetic impact of the proposed energy facility and associated facilities and any alteration of surrounding terrain. The presentation will show the location and design of the facilities relative to the physical features of the site in a way that will show how the installation will appear relative to its surroundings. The applicant shall describe the procedures to be utilized to restore or enhance the landscape disturbed during construction (to include temporary roads).

(4) Recreation. The application shall list all recreational sites within the area affected by construction and operation of the facility and shall then describe how each will be impacted by construction and operation.

(5) Historic and cultural preservation. The application shall coordinate with and provide a list of all historical and archaeological sites within the area affected by construction and operation of the facility to the Washington state ((~~office~~)) department of archaeology and historic preservation and interested tribe(s). The application shall:

(a) Provide evidence of this coordination;

(b) Describe how each site will be impacted by construction and operation; and

(c) Identify what mitigation will be required.

(6) Agricultural crops/animals. The application shall identify all agricultural crops and animals which could be affected by construction and/or operation of the facility and any operations, discharges, or wastes which could impact the adjoining agricultural community.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-372 Built environment—Transportation. (1) Transportation systems. The application shall identify all permanent transportation facilities impacted by the construction and operation of the energy facilities, the nature of the impacts, and the methods to mitigate impacts. Such impact identification, description, and mitigation shall, at least, take into account:

(a) Expected traffic volumes during construction, based on where the ((~~work force~~)) workforce is expected to reside;

(b) Access routes for moving heavy loads, construction materials, or equipment;

(c) Expected traffic volumes during normal operation of the facility;

(d) For transmission facilities, anticipated maintenance access; and

(e) Consistency with local comprehensive transportation plans.

(2) Vehicular traffic. The application shall describe existing roads((~~,~~)) and estimate volume, types, and routes of vehicular traffic which will arise from construction and operation of the facility. The applicant shall indicate the applicable standards to be utilized in improving existing roads and in constructing new permanent or temporary roads or access, and shall indicate the final disposition of new roads or access and identify who will maintain them.

(3) Waterborne, rail, and air traffic. The application shall describe existing railroads and other transportation facilities and indicate what additional access, if any, will be needed during planned construction and operation. The applicant shall indicate the applicable standards to be utilized in improving existing transportation facilities and in constructing new permanent or temporary access facilities, and shall indicate the final disposition of new access facilities and identify who will maintain them.

(4) Parking. The application shall identify existing and any additional parking areas or facilities which will be needed during construction and operation of the energy facility, and plans for maintenance and runoff control from the parking areas or facilities.

(5) Movement/circulation of people or goods. The application shall describe any change to the current movement or circulation of people or goods caused by construction or operation of the facility. The application shall indicate consideration of multipurpose utilization of rights of way and describe the measures to be employed to utilize, restore, or rehabilitate disturbed areas. The application shall describe the means proposed to ensure safe utilization of those areas under applicant's control where public access will be granted during project construction, operation, abandonment, termination, or when operations cease.

(6) Traffic hazards. The application shall identify all hazards to traffic caused by construction or operation of the facility. Except where security restrictions are imposed by the federal government, the applicant shall indicate the manner in which fuels and waste products are to be transported to and from the facility, including a designation of the specific routes to be utilized.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-60-535 Socioeconomic impact. The application shall include a detailed socioeconomic impact analysis which identifies primary, secondary, positive as well as negative impacts on the socioeconomic environment in the area potentially affected by the project, with particular attention to the impact of the proposed facility on population, ((~~work force~~)) workforce, property values, housing, health facilities and services, education facilities, governmental services, and local economy. The study area shall include the area that may be affected by employment within a one-hour commute distance of the project site. The analysis shall use the most recent data as published by the U.S. Census or state of Washington sources.

(1) The analysis shall include:

(a) Population and growth rate data for the most current ((~~ten~~)) 10-year period for the county or counties and incorporated cities in the study area;

(b) Published forecast population figures for the study area for both the construction and operation((~~s~~)) periods;

(c) Numbers and percentages describing the race/ethnic composition of the cities and counties in the study area;

(d) Average per capita and household incomes, including the number and percentage of the population below the poverty level for the cities and counties within the study area;

(e) A description of whether or not any minority or low-income populations would be displaced by this project or disproportionately impacted;

(f) The average annual ((~~work force~~)) workforce size, total number of employed workers, and the number and percentage of unemployed workers including the year that data are most recently available. Employment numbers and percentage of the total ((~~work force~~)) workforce should be provided for the primary employment sectors;

(g) An estimate by month of the average size of the project construction, operational ((~~work force~~)) workforce by trade, and ((~~work force~~)) workforce peak periods;

(h) An analysis of whether or not the locally available ((~~work force~~)) workforce would be sufficient to meet the anticipated demand for direct workers and an estimate of the number of construction and operation workers that would be hired from outside of the study area if the locally available ((~~work force~~)) workforce would not meet the demand;

(i) A list of the required trades for the proposed project construction;

(j) An estimate of how many direct or indirect operation and maintenance workers (including family members and/or dependents) would temporarily relocate;

(k) An estimate of how many workers would potentially commute on a daily basis and where they would originate.

(2) The application shall describe the potential impact on housing needs, costs, or availability due to the influx of workers for construction and operation of the facility and include the following:

(a) Housing data from the most recent ((~~ten~~)) 10-year period that data are available, including the total number of housing units in the study area, number of units occupied, number and percentage of units vacant, median home value, and median gross rent. A description of the available hotels, motels, bed and breakfasts, campgrounds, or other recreational facilities;

(b) How and where the direct construction and indirect ((~~work force~~)) workforce would likely be housed. A description of the potential impacts on area hotels, motels, bed and breakfasts, campgrounds, and recreational facilities;

(c) Whether or not meeting the direct construction and indirect ((~~work force's~~)) workforce's housing needs might constrain the housing market for existing residents and whether or not increased demand could lead to increased median housing values or median gross rents and/or new housing construction. Describe mitigation plans, if needed, to meet shortfalls in housing needs for these direct and indirect ((~~work forces~~)) workforces.

(3) The application shall have an analysis of the economic factors including the following:

(a) The approximate average hourly wage that would likely be paid to construction and operational workers, how these wage levels vary from existing wage levels in the study area, and estimate the expendable income that direct workers would likely spend within the study area;

(b) How much((~~,~~)) and what types of direct and indirect taxes would be paid during construction and operation of the project and which jurisdictions would receive those tax revenues;

(c) The other overall economic benefits (including mitigation measures) and costs of the project on the economies of the county, the study area, and the state, as appropriate, during both the construction and operational periods.

(4) The application shall describe the impacts, relationships, and plans for utilizing or mitigating impacts caused by construction or operation of the facility to the following public facilities and services:

(a) Fire;

(b) Police;

(c) Schools;

(d) Parks or other recreational facilities;
(e) Utilities;
(f) Maintenance;
(g) Communications;
(h) Water/stormwater;
(i) Sewer/solid waste;
(j) Other governmental services.

(5) The application shall compare local government revenues generated by the project (e.g., property tax, sales tax, business and occupation tax, payroll taxes) with their additional service expenditures resulting from the project; and identify any potential gaps in expenditures and revenues during both construction and operation of the project. This discussion should also address potential temporal gaps in revenues and expenditures.

(6) To the degree that a project will have a primary or secondary negative impact on any element of the socioeconomic environment, the applicant is encouraged to work with local governments to avoid, minimize, or compensate for the negative impact. The term "local government" is defined to include cities, counties, school districts, fire districts, sewer districts, water districts, irrigation districts, or other special purpose districts.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-60-536 Air emissions permits and authorizations. (1) The application for site certification shall include a completed prevention of significant deterioration (PSD) permit ((~~(PSD)~~)) application and a notice of construction application pursuant to the requirements of chapter 463-78 WAC.

(2) The application shall include requests for authorization for any emissions otherwise regulated by local air agencies as identified in WAC 463-60-297 Pertinent federal, state, and local requirements.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-60-537 Wastewater/stormwater discharge permit applications. The application for site certification shall include:

(1) Either:

(a) A completed National Pollutant Discharge Elimination System (NPDES) permit application, for any proposed discharge to surface waters of the state of Washington, pursuant to the requirements of WAC 463-76-031; or

((~~(2)~~)) (b) For any proposed discharge to publicly owned treatment works (POTW) and/or groundwater of the state of Washington, a state waste discharge application; and

((~~(3)~~)) (2) A notice of intent to be covered under any applicable statewide general permit for stormwater discharge.

OTS-5598.1

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-030 Applicability. (1) The provisions of this chapter apply to the construction, reconstruction, or modification of electrical transmission facilities in each of the following circumstances:

(a) The facility is located in a national interest electric transmission corridor as specified in RCW 80.50.045.

(b) The applicant(s) or preapplicant(s) choose to seek certification under RCW 80.50.060 and the facility:

(i) Has a nominal voltage of at least ((~~one hundred fifteen thousand~~)) 115,000 volts; and

(ii) Is proposed to be located in a completely new corridor which is located in more than one jurisdiction where at least one such jurisdiction has promulgated land use plans or zoning ordinances. The location of the terminus of the facility or the location of an interconnection between the facility and the existing electrical transmission grid in an existing corridor does not disqualify a facility from consideration under this subsection.

(c) The applicant(s) or preapplicant(s) choose to seek certification under RCW 80.50.060 and the facility:

(i) Has a nominal voltage in excess of ((~~one hundred fifteen thousand~~)) 115,000 volts; and

(ii) Is proposed to be located outside an existing or designated electrical transmission corridor identified in (a) or (b) of this subsection.

(2) This section does not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those specified in this section.

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-040 Initial consultation. Prior to filing a preapplication request under WAC 463-61-050, the preapplicant shall meet and consult with the EFSEC staff concerning the proposed project. Topics for discussion shall include but not be limited to:

(1) The nature of the project, the contents of the preapplication request, and the status of the preapplicant's progress toward obtaining information and data regarding the project.

(2) A discussion of whether a third-party contractor is likely to be needed to prepare an environmental documentation for the project.

(3) Development of a preapplication plan to be filed with a preapplication request.

(4) The coordination of the public informational meeting.

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-050 Preapplication process. The preapplication request shall be filed with EFSEC at the EFSEC's office and contain the following information:

(1) The name and mailing address of the preapplicant, including a contact name, address, telephone number, and email address of the contact person.

(2) A description of the proposed transmission route and corridor, including location maps and plot plans to scale, showing all major components, including a description of zoning and site availability for any permanent facility, and including whether and to what extent the proposed project is located within a national interest electric transmission corridor.

(3) A description of the proposed right of way width for the transmission line, including the extent a new right of way will be required or an existing right of way will be widened.

(4) A description of the proposed transmission line structures and their dimensions.

(5) A description of the schedule desired for the project, including the expected application filing date, the expected beginning date for construction, and the expected project operational date.

(6) A list of the federal, state, tribal, and local government entities, including mailing addresses, contact names, telephone numbers, and email addresses that have possible permitting responsibilities for the project (if the project proponents were not to choose the EFSEC review) or ownership of land on which the project will be located. The list shall also identify governmental entities that have requested the preapplicant to notify them of any application or preapplication for site certification.

(7) Information or data that may be available at a later date.

(8) A summary and timeline of any initial consultation to explain the proposal and/or request input from the EFSEC staff, federal, state, and local agencies, tribal governments, property owners, and interested persons.

(9) A public participation plan that:

(a) Identifies specific tools and actions to facilitate stakeholder communications and public information, including an up-to-date project website and a readily accessible, single point of contact within the company;

(b) Lists all central locations in each local government throughout the project area where the preapplicant shall provide copies of all their filings related to the proposed project; and

(c) Includes a description and schedule explaining how the preapplicant intends to respond to requests for information from the public as well as federal, state, local, and tribal agencies or any other legal entities that could have permitting requirements if the project proponents were not to choose the EFSEC review.

(10) A negotiation process acceptable to EFSEC between the preapplicant and the cities, towns, and/or counties through which the proposed transmission line corridor will be located except where the cities, towns, and/or counties have designated transmission corridors through their land use plans or zoning ordinances.

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-060 Commencement of preapplication process and public informational meeting. (1) Within three days of filing a preapplication request with EFSEC, the preapplicant shall send notice to:

(a) All the towns, cities, and counties in which the proposed electric transmission line route is located;

(b) Persons or governmental agencies owning land that may be acquired for the project or in which an easement may be sought;

(c) Landowners within ((~~three hundred~~)) 300 feet of the proposed corridor; and

(d) Tribal, federal, and state permitting entities if the project proponents were not to choose the EFSEC review.

(2) The notice shall contain a brief summary of the proposed project, the preapplication and application process and tentative schedules, the locations where copies of the notice are located in each town, city, and county traversed by the proposed transmission route, and the address of a website containing the proposed project information.

(3) The notice to each affected landowner shall be mailed to the address of record on file with the applicable county auditor and have an explanation of the rights an affected landowner has during an EFSEC application review and under applicable Washington eminent domain laws.

(4) Within ((~~sixty~~)) 60 days after receipt of the preapplication fee, EFSEC shall conduct at least one public informational meeting. The public informational meeting shall be for the purpose of informing the public and interested entities of relevant information regarding the proposed electrical transmission facility.

(a) The public meeting, at a minimum, shall provide the details of the preapplication request and the preapplication plan including the use of exhibits and hand-outs.

(b) The preapplicant and EFSEC staff shall be available and prepared to answer questions.

(c) The meeting shall be scheduled to maximize the opportunity for attendance by the public and held at a location near the proposed transmission corridor. If the proposed transmission corridor crosses multiple counties, EFSEC may hold additional preapplication public meetings along the proposed corridor.

(d) At least two weeks prior to the date of the public meeting, notice of the preapplication public meeting shall be published in newspapers of general circulation for each town, city, and/or county where the site is proposed.

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-070 Corridors and transmission facilities considerations. (1) EFSEC shall consider and may recommend certification of electrical transmission facilities in corridors designated for this purpose by affected cities, towns, or counties where:

(a) Jurisdictions have identified electrical transmission facility corridors as part of their land use plans and zoning maps based on policies adopted in their plans.

(b) The proposed electrical transmission facility is consistent with any adopted development regulations that govern the siting of electrical transmission facilities in such corridors.

(c) Contiguous jurisdictions and jurisdictions in which related regional electrical transmission facilities are located have either prior to or during the preapplication process undertaken good faith efforts to coordinate the locations of their corridors consistent with RCW 36.70A.100.

(2) If EFSEC determines that negotiations as required in WAC 463-61-080 have failed, EFSEC shall consider the applicant's proposed corridor and transmission facilities consistent with RCW 80.50.090 and 80.50.100 taking into consideration the positions of the preapplicant and the affected cities, towns, or counties.

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-080 Negotiations between preapplicants, cities, towns and counties. (1) As required by RCW 80.50.330(2) if no corridor has been designated by a local government, the preapplicant and affected cities, towns, and/or counties shall negotiate to designate a corridor for the electrical transmission facility.

(2) If after ((~~sixty~~)) 60 days of negotiations between the preapplicant and affected cities, towns, and/or counties, no corridor has been agreed upon, the preapplicant together with an affected city, town, or county may request EFSEC extend the time of negotiations by a period of time that the preapplicant and city, town, and/or county have agreed upon. If such a joint request is not made, the negotiations shall be deemed failed.

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-090 Preapplication costs. (1) A preapplicant shall deposit with the state treasurer ((~~ten thousand dollars~~)) $10,000 to be applied to the cost of the preapplication process as a condition for proceeding by EFSEC.

(2) EFSEC shall manage the preapplication costs using the structure outlined in RCW 80.50.071 as follows:

(a) The preapplicant shall pay all reasonable and necessary costs incurred by EFSEC and its members;

(b) EFSEC shall charge against deposits made by the preapplicant;

(c) EFSEC shall provide the preapplicant with estimates of expected costs;

(d) Any EFSEC costs in excess of the initial ((~~ten thousand dollars~~)) $10,000 shall be agreed to by the preapplicant and deposited prior to EFSEC expenditure; and

(e) Any unexpended portions of funds deposited for the preapplication process shall be returned to the preapplicant or, if requested by the preapplicant, applied to the cost of EFSEC's review of an application for site certification.

AMENDATORY SECTION (Amending WSR 08-21-092, filed 10/15/08, effective 11/15/08)

WAC 463-61-100 Applications for site certification. (1) An application for site certification may be submitted when the preapplication process is completed. The preapplication process shall be complete when:

(a) EFSEC has held one or more public meetings under WAC 463-61-060((~~(3)~~)) (4); and

(b) Negotiations between affected cities, towns, and/or counties have been conducted and a corridor has been agreed on; or

(c) Negotiations under WAC 463-61-080 have been conducted but the preapplicant, cities, towns, and/or counties have not agreed on a corridor and EFSEC has determined that negotiations have failed.

(2) Applications for site certification of electrical transmission lines under RCW 80.50.045 and 80.50.060 shall follow the guidelines for applications for site certification found in chapter 463-60 WAC.

OTS-5599.1

AMENDATORY SECTION (Amending WSR 09-05-067, filed 2/13/09, effective 3/16/09)

WAC 463-62-010 Purpose. (1) The purpose of this chapter is to implement the policy and intent of RCW 80.50.010. This chapter sets forth performance standards and mitigation requirements specific to seismicity, noise limits, fish and wildlife, wetlands, water quality, and air quality, associated with site certification for construction and operation of energy facilities under the jurisdiction of the council. The council shall apply these rules to site certification agreements issued in connection with applications filed after the effective date of this chapter. Except for the provisions in chapter 463-66 WAC, these regulations shall not apply to energy facilities for which site certification agreements have been issued before the effective date of this chapter.

(2) The provisions of this chapter shall apply to the construction and operation of energy facilities, pursuant to chapter 80.50 RCW.

(3) Compliance with the standards within this chapter shall satisfy, in their respective subject areas, the requirements for issuance of a site certificate for construction and operation of energy facilities specified in subsection (2) of this section provided, however, that the council may require additional mitigation in the event that documents prepared pursuant to ((~~43.21~~)) 43.21C RCW (State Environmental Policy Act), demonstrate that the project poses a probable significant adverse impact that is not mitigated by the provisions of this chapter.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-62-020 Seismicity. The seismicity standard for construction of energy facilities shall be the standards contained in the state building code, chapter 51-50 WAC.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-62-030 Noise standards. Energy facilities shall meet the noise standards established in ((~~chapter 70.107~~)) RCW 70A.20.010, the Noise Control Act of 1974; and state rules adopted to implement those requirements in chapter 173-60 WAC, Maximum environmental noise levels.

(1) Adoption by reference. The energy facility site evaluation council adopts the following provisions of chapter 173-60 WAC by reference.

(a) WAC 173-60-010 Authority and purpose.

(b) WAC 173-60-020 Definitions.

(c) WAC 173-60-030 Identification of environments.

(d) WAC 173-60-040 Maximum permissible environmental noise levels.

(e) WAC 173-60-050 Exemptions.

(f) WAC 173-60-080 Variances and implementation schedules.

(g) WAC 173-60-090 Enforcement policy.

(2) Additional definitions.

(a) "Council" means the energy facility site evaluation council.

(b) In addition to the definitions contained in WAC 173-60-020, "department" and "director" shall be synonymous with the council unless a different meaning is plainly required by context.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-62-060 Water quality. Waste water discharges from projects under the council's jurisdiction shall meet the requirements of applicable state water quality standards, chapter 173-201A WAC, state groundwater quality standards, chapter 173-200 WAC, state sediment management standards, chapter ((~~173-204A~~)) 173-204 WAC, requirements of the Federal Water Pollution Control Act as amended (86 Stat 816,33 U.S.C. 1251, et seq.) and regulations promulgated thereunder.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-62-070 Air quality. Air emissions from energy facilities shall meet the requirements of applicable state air quality laws and regulations promulgated pursuant to the Washington ((~~State~~)) Clean Air Act, chapter ((~~70.94~~)) 70A.15 RCW, ((~~and~~)) the Federal Clean Air Act (42 U.S.C. 7401 et seq.), and chapter 463-78 WAC.

OTS-5600.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-64-020 Recommendations to governor—Approval or rejection of certification. The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within ((~~twelve~~)) 12 months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant. If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The draft site certification agreement shall include, but shall not be limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of the laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-64-030 Governor's action—Approval or rejection of certification, or reconsideration. Pursuant to RCW 80.50.100, within ((~~sixty~~)) 60 days of receipt of the council's report, the governor will take one of the following actions:

(1) Approve the application and execute the draft certification agreement; the certification agreement shall be binding upon execution by the governor and the applicant;

(2) Reject the application; or

(3) Direct the council to reconsider certain aspects of the draft certification agreement.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-64-040 Reconsideration of draft certification agreement. If directed by the governor under RCW 80.50.100 ((~~(2)(c)~~)) (3)(a)(iii) to reconsider certain aspects of the draft certification agreement, the council shall:

(1) Reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, reopen the adjudicative proceeding to receive additional evidence. Such reconsideration shall be conducted expeditiously.

(2) Resubmit the draft certification agreement to the governor incorporating any amendments deemed necessary upon reconsideration.

(3) Within ((~~sixty~~)) 60 days of receipt of such draft certification agreement, the governor will either approve the application and execute the certification agreement or reject the application. The

certification agreement shall be binding upon execution by the governor and the applicant.

OTS-5601.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-68-010 Purpose. This chapter sets forth the length of time before a site certification agreement expires if construction is not started, or commercial operation has not commenced, defines what activities constitute start of construction, and specifies the time frame within which a certificate holder must notify the council of the certificate holder's intentions, any project design changes, and the status of the site. The council shall apply these rules to site certification agreements issued in connection with applications filed after the effective date of this chapter. Except for the provisions in this chapter ((~~463-36 WAC~~)), these regulations shall not apply to energy facilities for which site certification agreements have been issued before the effective date of this chapter.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-68-030 Term for start of construction. Subject to conditions in the site certification agreement and this chapter, construction may start any time within ((~~ten~~)) 10 years of the effective date of the site certification agreement.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-68-050 Submittal of plans and specifications prior to start of construction. At least ((~~ninety~~)) 90 days prior to start of construction as defined in WAC 463-68-040, a certificate holder shall provide the plans and specifications required by the site certification agreement to the council for approval.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-68-060 Review and reporting changes in the project status or site conditions. If construction does not both start within five years of the effective date of the site certification agreement and thereupon continue in a reasonably uninterrupted fashion toward project completion, then at least ((~~ninety~~)) 90 days prior to the end of the five-year period, the certificate holder shall report to the

council its intention to proceed or not to proceed with the project. If the certificate holder intends to proceed with the project, the certificate holder shall submit a report to the council describing:

(1) The nature and degree of any changes to the following since the effective date of the site certification agreement:

(a) Project design;

(b) Statements and information in the application;

(c) Statements and information in project-related environmental documents; and

(d) Project-related environmental conditions.

(2) Whether any new information or changed conditions indicate the existence of probable significant adverse environmental impacts that were not covered in any project-related environmental documents, including, but not limited to, those prepared under chapter 43.21C RCW.

(3) Suggested changes, modification, or amendments to the site certification agreement and/or any regulatory permits.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-68-080 Site certification agreement expiration. (1) If the certificate holder does not start or restart construction within ((~~ten~~)) 10 years of the effective date of the site certification agreement, or has canceled the project, the site certification agreement shall expire.

(2) If commercial operations have not commenced within ((~~ten~~)) 10 years of the effective date of the site certification agreement, the site certification agreement expires unless the certificate holder requests, and the council approves, an extension of the term of the site certification agreement.

(3) Upon a request to extend the term of the site certification agreement, the council may conduct a review consistent with the requirements of WAC 463-68-060 and 463-68-070, and other applicable legal requirements.

OTS-5602.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-70-010 Purpose. This chapter sets forth rules relating to monitoring the construction and operation of energy facilities to determine compliance with the terms of certification ((~~agreements~~)) and/or permits pursuant to RCW 80.50.040(9).

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-70-020 Compliance to be determined. Compliance monitoring procedures shall be implemented by the council as necessary to determine compliance and keep it and the public properly informed as to the status of compliance with the terms of certification agreements and the Prevention of Significant Deterioration (PSD), National Pollutant Discharge Elimination System (NPDES), or other permits issued by the council.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-70-070 Enforcement actions. (1) General. The council establishes four types of enforcement action in order to provide the council with a range of responses to apparent violations of a site certification agreement or the laws and rules enforced by the council. The range allows the chair or the council to choose an approach which it determines, in its discretion, to be best suited in light of the seriousness of an apparent violation, the potential danger to humans or the environment, the willingness and ability of the violator to make required corrections, and the speed with which corrective action should be taken.

(2) Emergency action by chair.

(a) Emergency action is appropriate when the chair or chair's designee believes that the nature of an apparent violation requires action too swiftly to allow for deliberation and decision by the full council or that action is required pending the completion of other enforcement action.

(b) The chair of the council or the chair's designee is authorized to take immediate action to halt or eliminate any imminent or actual substantial danger to health or welfare of persons or the environment resulting from violation of law or of terms of the site certification agreement, including the release of pollutants from facilities sited under chapter 80.50 RCW. The chair may:

(i) Order the immediate termination of an endangerment or an endangering release and the immediate suspension of a PSD, NPDES, or other permits issued by the council, or order the immediate commencement of corrective action;

(ii) Notify appropriate agencies that protective measures are required immediately to safeguard public health and safety;

(iii) Request the prosecuting attorney of an affected county or the attorney general to take immediate enforcement action for violations of certification agreements or permits pursuant to RCW 80.50.150(6).

(c) The council shall consider any emergency action at a regular or special meeting as soon as practical after the action is taken. It may adopt, rescind, or modify emergency action and may take other enforcement action as specified in this rule. The council retains jurisdiction to maintain or modify emergency action until the circumstances requiring the action are cured to the council's satisfaction or until other enforcement actions supersede the emergency action, whichever first occurs.

(d) If feasible, the council shall allow the subject of emergency action to present its views prior to adopting, affirming, or modifying the action.

(3) Notice of incident and request for assurance of compliance.

(a) A notice of incident is appropriate when the council believes that a violation has occurred; that it is being corrected quickly and effectively by the violator; that the violation caused no substantial danger to humans or the environment; and that a penalty assessment does not appear to be appropriate in light of the seriousness of the violation or as an incentive to secure future compliance.

(b) Whenever the council has probable cause to believe that any term or condition of a certificate agreement or permit has been violated, the council may serve a notice of incident and request for assurance of compliance upon the certificate holder. Within ((~~thirty~~)) 30 days after service of the notice, the certificate holder shall provide the council with a report of the incident and assurance of compliance, including appropriate measures to preclude a recurrence of the incident. The council shall review the assurance of compliance. It may close out the matter by resolution or take such further action as it believes to be necessary.

(4) Notice of violation.

(a) A notice of violation is appropriate when the council believes: That a violation has occurred; that a violation is not being timely or effectively corrected; that a violation may cause a substantial risk of harm to humans or the environment; or that a penalty may be appropriate as an incentive to future compliance.

(b) Whenever the council has probable cause to believe that a violation of any term or condition of a certificate agreement or permit has occurred, the council may serve upon the certificate holder a notice of violation and may include the assessment of a penalty pursuant to RCW 80.50.150((~~(5)~~)) or ((~~RCW 74.90.431~~)) 70A.15.3160 if the violation is of the Washington Clean Air Act. The notice shall specify the provisions of law or rule or the certificate agreement or permit which are alleged to have been violated and shall include a requirement that corrective action be taken.

(c) Review procedure. The certificate holder named in a notice of violation may appeal the notice to the council and it may seek remission or mitigation of any penalty.

(i) A request for mitigation or remission of a penalty must be filed within ((~~fifteen~~)) 15 days after service of the notice of violation. A decision upon a request for remission or mitigation of a penalty is an administrative decision which the council may make in its discretion.

(ii) An appeal of a notice of violation must be filed within ((~~thirty~~)) 30 days after service of the notice of violation. The appeal is an application for an adjudicative proceeding under RCW 34.05.410. It must be in writing, timely filed in the offices of the council, and state the basis of the contention and exactly what change or remedy is sought from the council. Unless the application is denied or settled, the council shall conduct an adjudicative proceeding upon the challenge pursuant to chapter 34.05 RCW.

(iii) Any penalty imposed in a notice of violation shall be due and payable ((~~thirty~~)) 30 days after the following: Service of the notice of violation, if no review is sought; service of the council's decision upon remission or mitigation, if no appeal is made; or service of the council's final order on review of an appeal of a notice of violation. If the penalty is not paid when due, the council shall re-

quest the attorney general to commence an action in the name of the state to recover the penalty pursuant to RCW 80.50.150.

(5) Air emission violations. Consistent with RCW ((~~70.94.422~~)) 70A.15.3130, all council enforcement actions and penalties for all air emission violations shall be consistent with RCW ((~~70.94.332, 70.94.430, 70.94.431~~)) 70A.15.3010, 70A.15.3150, 70A.15.3160 (1) through (7), and ((~~70.94.435~~)) 70A.15.3170. The council may enter such orders as authorized by chapter 80.50 RCW regarding air pollution episodes or violations, as set forth in WAC 463-78-230.

(6) NPDES permit violations. In addition to the provisions of this chapter, council enforcement actions related to noncompliance with or violations of NPDES permits administered by the council shall be consistent with RCW 80.50.150, chapter 90.48 RCW, and chapter 463-76 WAC.

(7) Judicial enforcement.

(a) Judicial enforcement is available through chapter 80.50 RCW. It is appropriate when the council believes that judicial action may be of substantial assistance in securing present or future compliance or resolution of the underlying problem.

(i) The council may request the attorney general or the prosecuting attorney of any county affected by a violation to commence civil proceedings to enforce the provisions of chapter 80.50 RCW, pursuant to RCW 80.50.150(6).

(ii) The council may request the prosecuting attorney of any county affected by a violation to commence criminal proceedings to enforce the provisions of chapter 80.50 RCW, pursuant to RCW 80.50.150(6).

(b) The council may also secure judicial enforcement of its rules or orders pursuant to RCW 34.05.578.

OTS-5617.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-72-010 Purpose. This chapter sets forth rules for the content and timing of preparing site restoration or preservation plans for implementation at the conclusion of a plant's operating life; if a project is terminated; or if construction is suspended. The council shall apply these rules to site certification agreements issued in connection with applications filed after the effective date of this chapter. Except for the provisions in chapter ((~~463-36~~)) 463-66 WAC, these regulations shall not apply to energy facilities for which site certification agreements have been issued before the effective date of this chapter.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-72-040 Initial site restoration plan. (1) At least ((~~ninety~~)) 90 days prior to the beginning of site preparation, the

certificate holder shall provide the council with an initial site restoration plan which addresses site restoration occurring at the conclusion of the plant's operating life, or in the event the project is suspended or terminated during construction or before it has completed its useful operating life.

(2) The plan shall parallel a decommissioning plan, if such a plan is prepared for the project.

(3) The initial site restoration plan shall be prepared in sufficient detail to identify, evaluate, and resolve all major environmental and public health and safety issues presently anticipated. It shall describe the process used to evaluate the options and select measures that will be taken to restore or preserve the site or otherwise protect all segments of the public against risks or danger resulting from the site. The plan shall include a discussion of economic factors regarding the costs and benefits of various restoration options versus the relative public risk and shall address provisions for funding or bonding arrangements to meet the site restoration or management costs. The provision of financial assurances shall include evidence of pollution liability insurance coverage in an amount justified for the project, and a site closure bond, sinking fund, or other financial instrument or security in an amount justified in the plan.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-72-050 Detailed site restoration plan—Terminated projects. When a project is terminated, a detailed site restoration plan shall be submitted within ((~~ninety~~)) 90 days from the time the council is notified of the termination. An extension of time may be granted for good cause shown. The site restoration plan shall address the elements required to be addressed in WAC 463-72-040, in detail commensurate with the time until site restoration is to begin. The council will act on the plan at the earliest feasible time and may take or require action as necessary to deal with extraordinary circumstances.

OTS-5618.1

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-74-030 Regulations. Notwithstanding the provisions of WAC 173-303-801, to the extent of their applicability and appropriateness, the provisions of chapter 173-303 WAC shall apply to the on-site activities, at energy facilities subject to this chapter, which involve the generation, storage, transportation, treatment, or disposal of dangerous wastes.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-74-040 Monitoring and enforcement. The council will contract with the department of ecology for the monitoring activities for dangerous wastes regulated by this chapter under a certification agreement. As a result of said monitoring activities, ((~~DOE~~)) the department of ecology shall report to the council any activity by a permittee which in its judgment requires the initiation of appropriate enforcement activities by the council. The council shall then take or initiate action to enforce the terms of any certification agreement. This in no way shall restrict any enforcement by other public agencies and officials under existing law. If the department of ecology determines that immediate action is needed to enforce the act or any statute or regulation derived therefrom, it shall report immediately to the ((~~chairman~~)) chair who shall initiate such immediate enforcement action as may be necessary. Such action shall remain in effect until confirmed or modified by the council.

OTS-5619.1

AMENDATORY SECTION (Amending WSR 15-24-041, filed 11/23/15, effective 12/24/15)

WAC 463-76-005 Purpose. (1) This chapter establishes regulations specifying procedures and other rules which will be utilized by the council in implementing section 402 of the Federal Water Pollution Control Act (FWPCA), as amended, 33 U.S.C. 1251 et seq.

(2) The purpose of these regulations is to establish a state permit program, applicable to the discharge of pollutants and other wastes and materials to the surface waters of the state, which complies with the requirements of chapters 80.50 and 90.48 RCW, ((~~EPA~~)) section 402(b) of the FWPCA, and applicable state laws and regulations through the issuance of individual permits or coverage under stormwater general permits issued by the department of ecology.

(3) These regulations apply to:

(a) Any energy facility for which a certification agreement has been executed pursuant to chapter 80.50 RCW et seq.; and

(b) Any energy facility for which an application has been filed with the council for certification pursuant to chapter 80.50 RCW et seq.

(4) The authority for these regulations is based upon RCW 80.50.040(1), chapter 90.48 RCW, chapter 155, Laws of 1973, and the act.

AMENDATORY SECTION (Amending WSR 15-24-041, filed 11/23/15, effective 12/24/15)

WAC 463-76-010 Definitions. As used in this chapter, the following terms shall have the meanings indicated below:

(1) "Act" means the Federal Water Pollution Control Act (FWPCA) as amended, (33 U.S.C. 1251, et seq.).

(2) "Administrator" means the administrator of the United States Environmental Protection Agency.

(3) "Applicable water quality standards" means all water quality standards of the state of Washington to which a discharge is subject under state and federal law including, but not limited to, those which are codified in chapters 173-200, 173-201A, and 173-204 WAC, and 40 C.F.R. 131.36.

(4) "Applicant" shall mean any person who has applied for an NPDES permit pursuant to this chapter.

(5) "Certification agreement" means that binding site certification agreement executed between an applicant under chapter 80.50 RCW and the state, and shall contain the conditions set forth in the NPDES permit to be met prior to or concurrent with the construction or operation of any energy facility coming under chapter 80.50 RCW.

(6) "Chair" means the ((~~chairman~~)) chair of the energy facility site evaluation council.

(7) "Contiguous zone" means the entire zone established or to be established by the United States under Article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(8) "Council" means the Washington state energy facility site evaluation council.

(9) "Council ((~~manager~~)) director" means the individual holding the position of ((~~manager~~)) director of the council.

(10) "Discharge of pollutant" and the term "discharge of pollutants" each mean:

(a) Any addition of any pollutant or combination of pollutants to surface waters of the state from any point source;

(b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source.

(11) "Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with such groundwater infiltration or surface waters as may be present.

(12) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater together with such industrial waste as may be present. In case of subsurface sewage treatment and disposal, the term is restricted to mean those facilities treating and disposing of domestic wastewater only from a septic tank with subsurface sewage treatment and disposal and an ultimate design capacity exceeding ((~~fourteen thousand five hundred~~)) 14,500 gallons per day at any common point.

(13) "Ecology" means the Washington state department of ecology.

(14) "Effluent limitations" means any restriction established by the state of Washington or the administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into surface waters, the waters of the state, including schedules of compliance.

(15) "Energy facility" means any energy facility, as defined in RCW ((~~80.50.014~~)) 80.50.010.

(16) "EPA" means the United States Environmental Protection Agency.

(17) "General permit" means a permit which covers multiple dischargers within a designated geographical area, in lieu of individual permits being issued to each discharger.

(18) "Governor" means the governor of the state of Washington.

(19) "Municipality" means a city, town, county, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Federal Water Pollution Control Act (FWPCA).

(20) "National Pollutant Discharge Elimination System (NPDES)" means the national system for the issuance of permits under section 402 of the act and includes the Washington state program (set forth in chapter 151, Laws of 1973) for participation in said system which has been approved by the administrator in whole pursuant to section 402 of the act.

(21) "New source" means any building, structure, facility, or installation from which there is or may be the discharge of pollutants, the construction of which is commenced:

(a) After promulgation of standards of performance under section 306 of the act which are applicable to such sources; or

(b) After proposal of standards of performance in accordance with section 306 of the act which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within ((~~one hundred twenty~~)) 120 days of their proposal.

(22) "NPDES application" means the uniform national forms for application for a NPDES permit (including subsequent additions, revisions, or modifications duly promulgated by the administrator pursuant to the act) as prescribed by the council for use in the Washington state NPDES program.

(23) "NPDES form" means any issued NPDES permit, the NPDES application and the NPDES reporting form, and any uniform national form developed for use in the NPDES program as prescribed in regulations promulgated by the administrator.

(24) "NPDES permit" means the permit incorporated in the certification agreement issued by the council which regulates the discharge of pollutants pursuant to section 402 of the act.

(25) "NPDES program" means that program of the state of Washington pursuant to section 402 of the act.

(26) "NPDES reporting form" or "discharge monitoring report" means the uniform national forms (including subsequent additions, revisions, or modifications duly promulgated by the administrator pursuant to the act) for reporting data and information pursuant to monitoring and other conditions of NPDES permits.

(27) "Permit" means an authorization, license, or equivalent control document issued by the council to implement this chapter. "Permit" includes issuance of coverage under a stormwater general permit issued by the department of ecology. "Permit" does not include any permit which has not yet been the subject of final council action, such as a "draft permit" or a "proposed permit."

(28) "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, local, state, or federal government agency, industry, firm, individual or any other entity whatsoever.

(29) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, or vessel or other floating craft, from which pollutants are

or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

(30) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean:

(a) Sewage from vessels within the meaning of section 312 of the act; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if such state determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(31) "Regional administrator" means the EPA's region X administrator.

(32) "State" means any of the ((~~fifty~~)) 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(33) "Stormwater discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial facility. For energy facilities, the term includes, but is not limited to, stormwater discharges from industrial facility yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined in 40 C.F.R. 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this subsection, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on facility lands separate from the facility's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater drained from the above-described areas. The following additional categories of facilities are considered to be engaging in "industrial activity":

(a) Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 C.F.R. subchapter N;

(b) Facilities where construction activity includes clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

(34) "Surface waters of the state" means all waters defined as "waters of the United States" in 40 C.F.R. 122.2 that are within the boundaries of the state of Washington. This includes lakes, rivers, ponds, streams, inland waters, wetlands, ocean, bays, estuaries, sounds, and inlets.

(35) In the absence of other definitions as set forth herein, the definitions as set forth in 40 C.F.R. 122.2 and 122.26(b) shall be used.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-031 Application filing with the council. (1) For each energy facility proposing to commence a discharge of pollutants to surface waters of the state, there shall be filed with the council:

(a) A complete NPDES application at the time of submitting an application for site certification to the council pursuant to RCW 80.50.071((~~,~~)) for proposals to discharge wastewater or stormwater to surface waters of the state. Applicants may seek coverage for stormwater discharge associated with construction activity or stormwater from areas located on facility lands separate from the facility's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with stormwater drained from the areas described in WAC 463-76-010(33) under a NPDES stormwater general permit, promulgated by ecology. Any subsequent determination of such an NPDES application's adequacy shall not affect the council's finding that a complete application pursuant to RCW ((~~80.50.070~~)) 80.50.071 has been received.

(b) A complete NPDES application for any energy facility and not covered above shall be filed either:

(i) No less than ((~~one hundred eighty~~)) 180 days in advance of the day on which it desires to commence the discharge of pollutants; or

(ii) In sufficient time prior to the commencement of the discharge of pollutants to insure compliance with the requirements of section 306 of the act, and other applicable water quality standards and applicable effluent standards and limitations.

(2) Each person requesting an NPDES permit from the council shall be required to submit additional information as determined necessary by the council after an NPDES application has been filed and reviewed by the council. Information shall be provided in sufficient detail such as to fulfill the requirements of 40 C.F.R. 122.26(c).

(3) If an NPDES application is determined to be incomplete or otherwise deficient, the NPDES portion of any application filed pursuant to RCW ((~~80.50.070~~)) 80.50.071 shall not be processed until the applicant has supplied the missing information or otherwise corrected the deficiency.

(4) The council shall not consider any NPDES application for ((~~a~~)) an energy facility until and unless an application for certification is filed with the council pursuant to RCW ((~~80.50.070~~)) 80.50.071.

(5) Each NPDES application will be submitted on such form as specified by the council.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-032 Signature form. (1) Applications. All permit applications shall be signed as follows:

(a) For a corporation. By a responsible corporate officer. For the purpose of this section, responsible corporate officer means:

(i) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(b) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

(i) The chief executive officer of the agency; or

(ii) A senior executive officer having responsibility.

(2) All reports required by permits, and other information requested by the council, shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of facility manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(c) The written authorization is submitted to the council.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the council prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsection (1) or (2) of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision

in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-034 Fact sheets. (1) The council shall prepare and include in any public notice given pursuant to WAC 463-76-041 a fact sheet with respect to the NPDES application described in the public notice. Such fact sheet shall include at least the following:

(a) The type of facility or activity which is subject of the application;

(b) A sketch or detailed description of the location of the discharge described in the NPDES application;

(c) A quantitative description of the type of discharge described in the NPDES application which includes at least the following:

(i) The rate and frequency of the proposed discharge; as average daily flow in gallons per day or million gallons per day and whether the flow is continuous or intermittent;

(ii) For thermal discharges, the estimated maximum, minimum, and average summer and winter temperatures; and

(iii) The average daily discharge in pounds per day, or other appropriate units, of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under this chapter and RCW 90.48.010, 90.54.020 and sections 301, 302, 306 or 307 of the act and regulations published thereunder;

(d) The tentative determinations required under WAC 463-76-033.

(e) The legal and technical grounds for the tentative determination, including an explanation of how conditions meet both the technology-based and water quality-based requirements of the act and chapters 90.48, 90.52, and 90.54 RCW;

(f) The effluent standards and limitations applied to the proposed discharge;

(g) The applicable water quality standards, including identification of the uses for which receiving waters have been classified by ecology;

(h) How the draft permit addresses use or disposal of residual solids generated by wastewater treatment; and

(i) A description of the procedures to be used by the council in formulating final determinations for an NPDES permit, which shall include, but not be limited to:

(i) Thirty-day comment period required by WAC 463-76-041(2);

(ii) Procedures for requesting a public hearing and the nature thereof; and

(iii) Any other procedures by which the public may participate, either directly or through counsel for the environment, in the formulation of the final determinations, including the availability of any environmental assessments or detailed statements of environmental im-

pact and any public hearings which may be held by the council prior to the final determination on the NPDES application.

(2) The name of any person or group will be added to a mailing list upon request for receipt of copies of fact sheets. A fact sheet will be sent to the applicant and each person or group on such mailing list. Each person or group on such mailing list will be sent notice of any subsequent revision of the permit or fact sheet.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-041 Public notice. (1) The council shall circulate notice of the NPDES application and tentative determination within the geographical areas of the proposed discharge. Circulation shall include one or more of the following:

(a) Posting for a period of ((~~thirty~~)) 30 days in the post office and public places of the municipality nearest the premises of the applicant in which the effluent source is located;

(b) Posting for a period of ((~~thirty~~)) 30 days at or near the entrance of the applicant's principal place of business and in nearby places;

(c) Posting on the council's internet website;

(d) Publishing in a major local newspaper of general circulation.

(2) Any persons may, within ((~~thirty~~)) 30 days following the date of the public notice, submit their written views on the tentative determinations with respect to the NPDES application. All written comments submitted during the ((~~thirty~~)) 30-day comment period shall be retained by the council and considered in their final determination with respect to the NPDES applications. The period for comments may be extended at the discretion of the council.

(3) The contents of public notice of application for NPDES permits shall include at least the following:

(a) Name, address, and telephone number of the council;

(b) Name and address of applicant;

(c) Brief description of applicant's activities or operations which result in the discharge described in the NPDES application (e.g., thermal electric power generating facility stationary or floating);

(d) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway, indicating whether such discharge is new, a modification, or an existing discharge;

(e) A statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the NPDES application;

(f) A brief description of the procedures for the formulation of final determinations, including the ((~~thirty~~)) 30-day comment period required by paragraph (2) of this section and any other means set forth in WAC 463-76-034 (1)(i).

(g) Address and telephone number of state or interstate agency premises at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to WAC 463-76-033(2), request a copy of the fact sheet described in WAC 463-76-034, and inspect and copy NPDES forms and related documents at a reasonable charge.

(4) The council shall notify the applicant and persons who have submitted written comments or requested notice of the final permit decision. This notification shall include response to comments received and reference to the procedures for contesting the decision.

(5) Public and agency notice will be given as set forth below:

(a) The council shall mail the notice to any person or group carried on the mailing list identified in WAC 463-76-034(2). Upon written request, the name of any person or group shall be added ((~~upon written request~~)) to a mailing list for distributing copies of notices for all NPDES applications within the state or within a certain geographical area.

(b) At the time of issuance of public notice pursuant to this section, a fact sheet will be sent to:

(i) Any other state whose waters may be affected by the issuance of the NPDES permit and to any interstate agency having water quality control authority over waters which may be affected by the issuance of a permit and, upon request, providing such state and interstate agencies with a copy of the NPDES application and a copy of the proposed permit prepared pursuant to WAC 463-76-033(2). Each affected state and interstate agency shall be afforded an opportunity to submit written recommendations to the council and to the regional administrator, which shall be duly considered by the council in accordance with the policies, provisions and regulations of the act, chapter 80.50 RCW et seq., and chapter 34.05 RCW et seq.

(ii) The district engineer of the Army Corps of Engineers, the United States Fish and Wildlife Service, the United States National Oceanic and Atmospheric Administration - Fisheries, the state departments of ecology, fish and wildlife, natural resources, ((~~and~~)) social and health services, ((~~the office of~~)) and archaeology and historic preservation ((~~office~~)), applicable Indian tribes, and any other applicable government agency.

(iii) Any other federal, state, or local agency, Indian tribe, upon request and shall provide such agencies an opportunity to respond, comment or request a public hearing pursuant to WAC 463-76-042.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-042 Public hearings. (1) The applicant, any affected state, any affected interstate agency, any affected county, any interested agency, any affected tribe, person or group of persons, or the regional administrator may request of or petition the council for a public hearing on the council's tentative determination under WAC 463-76-033. Any such request or petition for public hearing shall be filed within ((~~thirty~~)) 30 days after the giving of public notice pursuant to WAC 463-76-041. Said request or petition shall indicate the interest of the party filing such request and the reasons why it is thought that a hearing is warranted.

(2) A public hearing shall be held if there is a significant public interest (including the filing of request(s) or petition(s) for such hearing) in holding such a hearing.

(3) Any hearings brought pursuant to this section shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the council, and may, as appropriate, consider related groups of permit applications.

(4) Any public hearings held hereunder will be conducted in accordance with provisions of RCW 80.50.090, chapter 34.05 RCW et seq., and regulations promulgated thereunder.

(5) Public notice of any hearing held pursuant to WAC 463-76-042 (1) through (4) shall be circulated at least as widely as was the notice of the NPDES application and shall include at least the following:

(a) Notice shall be published in at least one major local newspaper of general circulation within the geographical area of the discharge;

(b) Notice shall be sent to all persons and government agencies which received a copy of the notice or the fact sheet;

(c) Notice shall be mailed to any person or group upon request; and

(d) Notice shall be effected pursuant to subparagraphs (a) and (c) of this paragraph at least ((~~[thirty]~~)) 30 days in advance of the hearing. The council may give notice of a public hearing concurrent with public notice given pursuant to WAC 463-76-041.

(6) The contents of public notice of any hearing held pursuant to WAC 463-76-042 (1) through (4) shall include at least the following notice which meets the requirements of this section:

(a) Name, address, and phone number of the council;

(b) Name and address of each applicant whose application will be considered at the hearing;

(c) Name of waterway to which each discharge is made and short description of the location of each discharge on the waterway;

(d) A brief reference to the public notice issued for each NPDES application, including identification number and date of issuance (where applicable);

(e) Information regarding the time and location for the hearing;

(f) The purpose of the hearing;

(g) A short and plain statement of the matters asserted;

(h) Address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit prepared pursuant to WAC 463-76-033(2) ((~~above~~)), request a copy of each fact sheet prepared pursuant to WAC 463-76-034, and inspect a copy NPDES forms and related documents; and

(i) A brief description of the nature of the hearing, including the rules and procedures to be followed.

(7) The council shall cause a record to be made of all hearings required pursuant to this section. The record may be stenographic, mechanical, or electronic.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-043 Public access to information. (1) All records relating to NPDES applications (including the draft NPDES permit prepared pursuant to WAC 463-76-033(2) or any public comment upon those records pursuant to WAC 463-76-041(2)) shall be available to the public for inspection and copying consistent with WAC 463-06-110 - Copying and fees.

(2) Any information (other than effluent data) received by the council and contained in any NPDES forms, or other records, reports, or plans shall be protected as confidential upon a showing by any per-

son that such information if made public would divulge methods or processes entitled to protection as trade secrets of such person. Claims of confidentiality for the following information will be denied:

(a) The name and address of any permit applicant or permittee;

(b) Permit applicants, permits, and effluent data;

(c) Information required by NPDES application forms pursuant to WAC 463-76-031 ((~~may not be claimed confidential~~)).

(3) Any information afforded confidential status shall be disclosed upon request to the regional administrator or his authorized representative who shall maintain the disclosed information as confidential.

(4) The council shall provide facilities for the inspection of nonconfidential information relating to NPDES forms during normal business hours of the council at its headquarters and shall insure that state employees will comply with requests for such inspection as soon as is reasonably possible without undue interference with council business. The council ((~~manager~~)) director shall insure that a machine or device for the copying of papers and documents is available for a reasonable fee as determined by the council.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-051 General conditions. (1) Any NPDES permit shall be issued for a period of not longer than five years, which period shall start on the date of issuance of said permit. Review and reissuance of this authorization per WAC 463-76-061 to discharge wastewater, stormwater, and sanitary sewer wastes and any related changes to the site certification agreement shall not require approval of the governor. However, the permittee shall inform the council at least ((~~one hundred eighty~~)) 180 days prior to any initiation of such a discharge.

(2) The decision to approve or reject, and on what conditions an NPDES permit shall be issued, shall be in conformance with the requirements of this chapter. A majority vote of council members shall resolve any dispute and shall determine the approval or rejection of an NPDES application.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-052 Prohibited discharges. (1) No discharge regulated under the act shall be made by energy facilities subject to the jurisdiction of the council unless authorized by an NPDES permit issued pursuant to these regulations.

(2) No NPDES permit may be issued by the council:

(a) When the conditions of the permit do not provide for compliance with the applicable requirements of the act, or regulations promulgated under the act;

(b) When the applicant is required to obtain a state certification under section 401 of the act and 40 C.F.R. 124.53 and that certification has not been obtained or waived;

(c) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Washington state;

(d) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste into surface waters of the state;

(e) For the discharge of any pollutants which the secretary of the Army acting through the chief, Corps of Engineers, finds would substantially impair anchorage and navigation in waters subject to the jurisdiction of the Corps of Engineers;

(f) For the discharge of any pollutant to which the regional administrator has objected in writing pursuant to any right to object provided the administrator in section 402(d) of the act;

(g) For discharge from a point source any pollutant which is in conflict with the plan or amendment thereto approved pursuant to section 208(b) of the act;

(h) For the discharge of any pollutant subject to a toxic pollutant discharge prohibition under section 307 of the act;

(i) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(i) Before the promulgation of guidelines under section 403(c) of the act, unless the council determines permit issuance to be in the public interest;

(ii) After promulgation of guidelines under section 403(c) of the act, when insufficient information exists to make a reasonable judgment whether the discharge complies with them;

(j) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to a violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of effluent limitations required by sections 301 (b)(1)(A) and 301 (b)(1)(B) of the act, and for which the state has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of comment period, that:

(i) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(ii) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The council may waive the submission of information by the new source or new discharger required by (j) of this subsection if the council determines that the council already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph is to be included in the fact sheet;

(k) Discharge any dangerous waste as defined in the Dangerous waste regulations, chapter 173-303 WAC, into a subsurface disposal system such as a well or drainfield.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-053 Effluent limitations, water quality standards, and other requirements for NPDES permits. (1) Any NPDES permit issued by the council shall apply and insure compliance with all of the following, whenever applicable:

(a) All known, available, and reasonable methods of treatment; including effluent limitations established under sections 301, 302, 306, and 307 of the act. The effluent limitations shall not be less stringent than those based upon the treatment facility design efficiency contained in approved engineering plans and reports or approved revisions thereto. The effluent limitations shall reflect any seasonal variation in industrial loading;

(b) Any more stringent limitation, including those:

(i) Necessary to meet water quality standards, treatment standards, or schedules of compliance established pursuant to any state law or regulation under authority preserved to the state by section 510 of the act; or

(ii) Necessary to meet any applicable federal law or regulation other than the act or regulations thereunder; or

(iii) Required to implement any applicable water quality standards; such limitations to include any legally applicable requirements necessary to implement total maximum daily loads established pursuant to section 303(d) and incorporated in the continuing planning process approved under section 303(e) of the act and any regulations and guidelines issued pursuant thereto;

(iv) Necessary to prevent or control pollutant discharges from facility site runoff, spillage or leaks, sludge or waste disposal, or materials handling or storage; and

(v) Necessary to meet the permit by rule provisions of the state dangerous waste regulation, WAC 173-303-802 (4) or (5).

(c) Any more stringent legal applicable requirements necessary to comply with a plan approved pursuant to section 208(d) of the act; and

(d) Prior to promulgation by the administrator of applicable effluent standards and limitations pursuant to sections 301, 302, 306 and 307 of the act, such conditions as the council determines are necessary to carry out the provisions of the act.

(2) In any case where an issued NPDES permit applies the effluent standards and limitations described in paragraph 1 of this section, the council shall make a finding that any discharge authorized by the permit will not have reasonable potential to violate applicable water quality standards and will have prepared some explicit verification of that finding.

(3) In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements pursuant to subsections (1) and (2) of this section, each issued NPDES permit shall specify:

(a) Average and maximum daily quantitative or other appropriate limitations for the level of pollutants in the authorized discharge. The average and maximum daily quantities must be made by weight except where the parameters are such that other measures are appropriate;

(b) If a dilution zone is authorized within which water quality standards are modified, the dimensions of such dilution zone.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-054 Schedules of compliance. (1) With respect to any discharge which is found by the council not to be in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in WAC

463-76-053 (1)(b) and (c), the permittee shall be required to take specific steps to achieve compliance with the following:

(a) Any legally applicable schedule of compliance contained in:

(i) Applicable effluent standards and limitations;

(ii) Water quality standards; or

(iii) Legally applicable requirements listed in WAC 463-76-053; or

(b) In the absence of any legally applicable schedule of compliance, the permittee shall take the required steps in a reasonable period of time, such period to be consistent with the guidelines and requirements of the act.

(2) In any case where the period of time for compliance specified in paragraph (1)(a) of this section exceed nine months, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; however, in no event shall more than nine months elapse between interim dates. If the time necessary for completion of the interim requirement (such as construction of a treatment facility) is more than nine months and is not readily divided into stages of completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement. For each NPDES permit schedule of compliance, interim dates and the final date of compliance shall, to the extent practicable, fall on the last day of the months of March, June, September and December.

(3) Either before or up to ((~~fourteen~~)) 14 days following each interim date and the final date of compliance, the permittee shall provide the council with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(4) If a permittee fails or refuses to comply with an interim or final requirement in a permit, such noncompliance shall constitute a violation of the permit for which the council may modify or revoke the permit or take direct enforcement action.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-055 Other terms and conditions. In addition to the requirements of WAC 463-76-051, 463-76-052 and 463-76-053, each issued NPDES permit shall require that:

(1) All discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the permit; any facility expansions, production increases, or process modifications which would result in new or increased discharges of pollutants must be reported to the council by submission of a new NPDES application or supplement thereto or, if such discharge does not violate effluent limitations specified in the NPDES permit, by submission to the council of notice of such new or increased discharges of pollutants; any discharge of any pollutant more frequent than or at a level in excess of that identified and authorized by the NPDES permit shall constitute a violation of the terms and conditions of the NPDES permit;

(2) The permit may be modified, suspended, or revoked in whole or in part during its terms for cause including, but not limited to, the following:

(a) Violation of any term or condition of the NPDES permit;

(b) Obtaining an NPDES permit by misrepresentation or failure to disclose fully all relevant facts;

(c) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; and

(d) A determination that the permitted activity endangers human health or the environment, or contributes to water quality standards violations.

(3) The permittee shall allow the council or its authorized representative upon the presentation of credentials and at reasonable times:

(a) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the NPDES permit;

(b) To have access to and copy at reasonable cost any records required to be kept under terms and conditions of the NPDES permit;

(c) To inspect any monitoring equipment or method required in the NPDES permit; or

(d) To sample any discharge of pollutants.

(4) The permittee shall at all times maintain a good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the NPDES permit.

(5) If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES permit, the permittee shall comply with that toxic effluent standard or prohibition even if this permit has not yet been modified to incorporate the requirement.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-061 Reissuance of NPDES permits. (1) Any permittee shall make application for reissuance of an NPDES permit or continuation of discharges after the expiration date of the NPDES permit by filing with the council an application for reissuance of the permit at least ((~~one hundred eighty~~)) 180 days prior to its expiration.

(2) The scope and manner of any review of an application for reissuance of an NPDES permit by the council shall be sufficiently detailed as to insure the following:

(a) That the permittee is in compliance with or has substantially complied with all of the terms, conditions, requirements, and schedules of compliance of the expired NPDES permit;

(b) That the council has up-to-date information on the permittee's production levels, permittee's waste treatment practices, and the nature, content, and frequencies of permittee's discharge, either pursuant to the submission of new forms and applications or pursuant to monitoring records and reports submitted to the council by the permittee and;

(c) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements listed in WAC 463-76-053 (1) and (2), including any additions to, or revisions or modifications of, such effluent

standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(3) The notice and procedures specified in WAC 463-76-041 and 463-76-042 are applicable to each request for reissuance of an NPDES permit.

(4) When a permittee has made timely and sufficient application for the renewal of a permit, an expiring permit remains in effect and enforceable until the application has been denied or a replacement permit has been issued by the council pursuant to WAC 463-76-0625 - Permit issuance.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-062 Modification of NPDES permit. (1) After notice and opportunity for a public hearing, any permit issued under the NPDES can be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the causes listed in WAC 463-76-055(2).

(2) The council may, upon request of a permittee, revise or modify a schedule of compliance in an issued NPDES permit if the council determines good and valid cause exists for such revision and if within ((~~thirty~~)) 30 days following receipt of notice from the council, the regional administrator does not object in writing.

(3) Any such modifications shall be executed by the council and the permittee in the same manner as the NPDES permit was executed, including full compliance with the requirements of WAC 463-76-041, 463-76-042 and 463-76-043.

AMENDATORY SECTION (Amending WSR 04-23-003, filed 11/4/04, effective 11/11/04)

WAC 463-76-0625 Permit issuance. Any permit issued by the council pursuant to this chapter shall become an attachment to a site certification agreement. For an energy facility proposal requiring the execution of a governor-approved site certification agreement, the permit shall be effective upon the governor's approval and execution of the site certification agreement. For existing facilities under the jurisdiction of the council, revisions, modifications, or reissuance of the NPDES permit shall be effective when approved by the council and signed by the chair.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-064 Transmission to regional administrator of proposed NPDES permit. (1) Each proposed NPDES permit will be transmitted to the regional administrator in accordance with the following procedures:

(a) A copy of the proposed NPDES permit, including any and all terms, conditions, requirements, or documents which are a part of the

proposed permit or which affect the authorization by the proposed permit of the discharge of pollutants except as to classes, types, or sizes within any category of point sources waived in writing by the regional administrator.

(b) The regional administrator shall be provided a ((~~ninety~~)) 90-day period, unless waived in advance, in which to comment upon, make recommendations with respect to, or object in writing to the issuance of the proposed permit pursuant to any right to object provided the administrator in section 402 (d)(2) of the act. No permit shall be issued if the regional administrator objects in writing to the issuance of such permit pursuant to any such right within said period, unless such objection is waived or withdrawn by the regional administrator in writing. Should no such objection be received within said period, it shall be presumed that the administrator has no objection to the issuance of the proposed permit.

(2) Immediately following execution by the applicant and the state, a copy of every issued NPDES permit along with any and all terms, conditions, requirements, or documents which are a part of such NPDES permit or which will affect the authorization of the discharge of pollutants will be sent to the regional administrator.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-065 Monitoring and enforcement. (1) Monitoring.

(a) Any discharge authorized by a permit may be subject to such monitoring requirements as may be reasonably required by the council, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). These monitoring requirements would normally include:

(i) Flow (in gallons per day);

(ii) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to limitation, reduction, or elimination under the terms and conditions of the permit;

(iii) Pollutants which the council finds could have a significant impact on the quality of waters of the state; and

(iv) Pollutants specified by the administrator, in regulations issued pursuant to the act, as subject to monitoring.

(b) Each effluent flow or pollutant required to be monitored pursuant to (a) of this subsection shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant.

Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels which may be monitored at less frequent intervals.

(c) Monitoring of intake water, influent to treatment facilities, internal waste streams, and/or receiving waters may be required when determined necessary by the council to verify compliance with net discharge limitations or removal requirements, to verify that proper waste treatment or control practices are being maintained, or to determine the effects of the discharge on the surface waters of the state.

(2) Recording of monitoring activities and results. Any permit which requires monitoring of the authorized discharge shall require that:

(a) The permittee shall maintain records of all information resulting from any monitoring activities required of them in their permit;

(b) Any records of monitoring activities and results shall include for all samples:

(i) The date, exact place, and time of sampling;

(ii) The dates analyses were performed;

(iii) Who performed the analyses;

(iv) The analytical techniques/methods used; and

(v) The results of such analyses((~~; and~~)).

(c) The permittee shall be required to retain for a minimum of three years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the council or regional administrator.

(3) Reporting of monitoring results.

(a) The permittee shall periodically report (at a frequency of not less than once per year) on the proper reporting form, the monitoring results obtained pursuant to monitoring requirements in a permit. In addition to the required reporting form, the council at its discretion may require submission of such other results as it determines to be necessary.

(b) Monitoring reports shall be signed by:

(i) In the case of corporations, by a responsible corporate officer or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge originates.

(ii) In the case of a partnership, by a general partner.

(iii) In the case of a sole proprietorship, by the proprietor.

(iv) In the case of a municipal, state, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.

(4) Use of registered or accredited laboratories.

(a) Except as established in (b) of this subsection, monitoring data submitted to the council in accordance with this chapter shall be prepared by a laboratory accredited under the provisions of chapter 173-50 WAC. These requirements are effective and binding on all permittees under the authority of rule, regardless of whether they have been included as conditions of a permit.

(b) The following parameters need not be done by an accredited or registered lab:

(i) Flow;

(ii) Temperature;

(iii) Settleable solids;

(iv) Conductivity, except that conductivity shall be accredited if the laboratory must otherwise be registered or accredited;

(v) pH, except that pH shall be accredited if the laboratory must otherwise be registered or accredited;

(vi) Turbidity, except that turbidity shall be accredited if the laboratory must otherwise be registered or accredited; and

(vii) Parameters which are used solely for internal process control.

(5) Compliance monitoring. The council may establish an interagency contract with ecology for compliance monitoring activities of water discharges under a certification agreement which incorporates the NPDES permit. Monitoring and/or appropriate enforcement activities by ecology are authorized by WAC 463-70-060(1).

(6) Enforcement.

(a) Enforcement activities regarding the NPDES program, including the levying of civil and criminal fines pertaining to all energy facilities where the permit is issued by the council, shall be undertaken by the council, with assistance from ecology, the attorney general, or the prosecuting attorney, as appropriate.

(b) Pursuant to the provisions of RCW 80.50.150 - Enforcement of compliance penalties, the council shall take or initiate such actions to enforce the terms of any site certification agreement and the incorporated NPDES permit. The council may take any or all of the following actions:

(i) Assess or sue to recover in court such civil fines, penalties, and other civil relief as may be appropriate for the violation by any person of:

(A) Any effluent standards and limitations or water quality standards;

(B) Any permit or term or condition thereof;

(C) Any filing requirements;

(D) Any duty to permit or carry out inspection, entry, or monitoring activities; or

(E) Any rules, regulations, or orders issued by the council.

(ii) Request the prosecuting attorney to seek criminal sanctions for the violation of any permits or conditions thereof without the necessity of a prior revocation of the permit;

(iii) Request the prosecuting attorney to seek criminal sanctions for the violation by such persons of:

(A) Any effluent standards and limitations or water quality standards;

(B) Any permit or term condition thereof; or

(C) Any filing requirements.

(iv) Seek criminal sanctions against any person who knowingly makes any false statement, representation, or certification in any form or any notice or report required by the terms and conditions of any issued permit or knowingly renders inaccurate any monitoring device or method required to be maintained by the council.

(v) Enter any premises in which an effluent source is located or in which records are required to be kept under terms or conditions of a permit, and otherwise be able to investigate, inspect, or monitor any suspected violations of water quality standards, or effluent standards and limitations, or of permits or terms or conditions thereof.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-080 Transmittal of data to regional administrator. (1) A complete NPDES form or relevant portions of any forms received by the council as outlined below shall be transmitted to the regional administrator upon receipt by the council.

(2) The regional administrator may object in writing to deficiencies in any NPDES application or reporting form and ((~~to required~~)) may require such deficiency to be corrected, so long as the administrator acts to inform the council by letter within ((~~twenty~~)) 20 days after receipt of the NPDES application or reporting form. If the regional administrator's objection relates to an NPDES application, the council will send to the regional administrator any information necessary to correct the deficiency. If the regional administrator so requests, the council will not issue the NPDES permit until they receive notice from the regional administrator that the deficiency has been corrected, which notice shall not be withheld for more than ((~~thirty~~)) 30 days.

(3) For all minor discharges, the council may require the operator of such a discharge to submit NPDES application forms or such other information as may be requested by the regional administrator.

(4) On the last day of the months of February, May, August, and November, the council shall transmit to the regional administrator a list of all instances in the previous ((~~ninety~~)) 90 days of failure or refusal of a permittee to comply with an interim or final requirement. Such list shall be available to the public for inspection or copying and shall contain at least the following information on each instance of noncompliance:

(a) Name and address of each noncomplying permittee;

(b) A short description of the instance of noncompliance (e.g., failure to submit preliminary plans, delay in commencement of construction of treatment facility, failure to notify the council of compliance with an interim requirement, etc.);

(c) A short description of any actions or proposed actions by the permittee or the council to comply or enforce compliance with the interim or final requirement; and

(d) Any details which explain or mitigate an instance of noncompliance with an interim or final requirement.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-76-090 Conflict of interest. No member of the council shall have received, or has during the previous two years received, a significant portion of ((~~his~~)) their income directly or indirectly from permit holders or applicants for an NPDES permit under the jurisdiction of this council.

(1) For the purposes of this section, the term "member" includes any individual who has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal.

(2) For the purpose of this section, the term "permit holders or applicants for a permit" shall not include any department or agency of a state government.

(3) For the purposes of this section, the term "significant portion of ((~~his~~)) their income" shall mean ((~~ten~~)) 10 percent of gross personal income for a calendar year, except that it shall mean ((~~fifty~~)) 50 percent of gross personal income for a calendar year if the recipient is over ((~~sixty~~)) 60 years of age and is receiving such portion pursuant to retirement pension or similar arrangement.

(4) For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(5) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" if it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary source of income.

OTS-5620.1

AMENDATORY SECTION (Amending WSR 15-16-033, filed 7/27/15, effective 8/27/15)

WAC 463-78-010 Purpose. The energy facility site evaluation council, under the authority vested in it by chapters 80.50 and ((~~70.94~~)) 70A.15 RCW, is charged with responsibilities for the conduct of a statewide program of air pollution prevention and control for energy facilities. This regulation provides the basic framework for carrying out the council's responsibilities for such a program through the establishment of standards for maximum permissible emissions, the implementation of registration and notice requirements, provision for monitoring and reporting, and the identification of regulatory actions which may be taken to enforce standards. This chapter is designed to operate within the statutory framework for the distribution of responsibilities between state, regional, and local units of government in dealing with problems of air pollution.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-070 Radioactive emissions. (1) Energy facilities subject to chapter 80.50 RCW which emit radionuclides to the air shall meet standards and conditions pursuant to RCW ((~~70.94.331~~)) 70A.15.3000, as promulgated by chapters 173-480 and 246-247 WAC.

(2) The council will enter into a memorandum of agreement with the state department of health regarding the regulation of radionuclides.

(3) The monitoring and regulation of radionuclides emissions from major energy facilities shall be consistent with the memorandum of agreement referenced in subsection (2) of this section between the state department of health and the council.

AMENDATORY SECTION (Amending WSR 15-16-033, filed 7/27/15, effective 8/27/15)

WAC 463-78-095 Permit issuance. (1) Permit(s) issued for air emissions in accordance with chapter 463-78 WAC shall become an attachment(s) to a site certification agreement.

(2) For new energy facilities the permit(s) shall be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities and effective

upon the governor's approval and execution of the site certification agreement.

(3) Except as provided in subsection (4) of this section, for certified energy facilities, any change in terms or conditions, extension, revision, or reissuance of permit(s) issued for air emissions in accordance with chapter 463-78 WAC, shall be governed by applicable law and regulation and shall not require modification of the site certification agreement, or governor approval.

(4) Permit(s) for air emissions revised or issued in conjunction with a request for amendment of a site certification agreement that requires governor approval under WAC 463-66-080, shall be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities and effective upon the signed approval of the governor of Washington state.

AMENDATORY SECTION (Amending WSR 19-16-025, filed 7/26/19, effective 8/26/19)

WAC 463-78-100 Registration. (1) Purpose. The registration program is used by the council to develop and maintain a current and accurate record of air contaminant sources subject to chapter 80.50 RCW. Information collected through the registration program is used to evaluate the effectiveness of air pollution strategies in collaboration with the department of ecology, and to verify source compliance with applicable air pollution requirements.

(2) Requirement to register. Except as provided in subsection (3) of this section, the owner or operator of each source subject to chapter 80.50 RCW shall register the source with the council. Sources subject to the Operating permit regulation in chapter 173-401 WAC are not required to comply with these registration requirements.

(3) The following sources are exempt from registration:

(a) A source that emits pollutants below the following emission rates:

Pollutant	Tons/Year
Carbon monoxide	5.0
Nitrogen oxides	2.0
Sulfur dioxide	2.0
Particulate Matter (PM)	1.25
Fine Particulate (PM10)	0.75
Volatile Organic Compounds (VOC)	2.0
Lead	0.005

; and

(b) A source or emission unit that does not emit measurable amounts of Class A toxic air pollutants specified in WAC 173-460-150.

(4) Initial registration. The owner or operator of a source that exists on the effective date of this rule must register the source with the council by no later than one year after the effective date of this rule. The owner or operator of a new source must register with the council within ((~~ninety~~)) 90 days after beginning operation.

(5) Annual reregistration. After initial registration, the owner or operator of a source must reregister with the council by February 15th of each year. The reregistration must include all of the informa-

tion required in the initial registration and must be updated to reflect any changes to such information since the previous registration. For information that has not changed since the previous registration, the owner or operator may reaffirm in writing the correctness and current status of the information previously furnished to the council.

(6) Registration format. Registration shall be in a format approved by the council. Each registration submittal shall include the following information:

(a) Name of the source and the nature of the business;

(b) Street address, telephone number, and email address of the source;

(c) Name, mailing address, telephone number, and email address of the owner or operator;

(d) Name, mailing address, telephone number, and email address of the local individual responsible for compliance with this rule;

(e) Name, mailing address, telephone number, and email address of the individual authorized to receive requests for data and information;

(f) A description of the production processes and a related flow chart;

(g) Identification of emission units and air pollutant generating activities;

(h) A plot plan showing the location and height of all emission units and air pollutant generating activities. The plot plan must also show the property lines of the air pollution source and indicate the distance to and direction of the nearest residential or commercial property;

(i) Type and quantity of fuels, including the sulfur content of fuels, used on a daily and annual basis;

(j) Type and quantity of raw materials used on a daily and annual basis;

(k) Estimates of the total actual emissions for the air pollution source of the following air pollutants: Particulate matter emissions, PM_{10} emissions, sulfur dioxide (SO_2), nitrogen oxides (NO_X), carbon monoxide (CO), volatile organic compounds (VOC), lead (Pb), fluorides, sulfuric acid mist, hydrogen sulfide (H_2S), total reduced sulfur (TRS), and reduced sulfur compounds;

(l) Calculations used to determine the estimated emissions in (k) of this subsection;

(m) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions; and

(n) Any other information specifically requested by the council.

(7) Procedure for estimating emissions. The registration submittal must include an estimate of actual emissions taking into account equipment, operating conditions, and air pollution control measures. The emission estimates must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the council. Any emission estimates submitted to the council must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(a) Source-specific emission tests;

(b) Mass balance calculations;

(c) Published, verifiable emission factors that are applicable to the source;

(d) Other engineering calculations; or

(e) Other procedures to estimate emissions specifically approved by the council.

(8) Other reports required.

(a) A report of closure shall be filed with the council within ((~~ninety~~)) 90 days after operations producing emissions permanently ceased at any source within the council's jurisdiction.

(b) A report of relocation of the source shall be filed with the council no later than ((~~ninety~~)) 90 days prior to the relocation of the source. Submitting a report of relocation does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC, nor does it relieve the owner or operator from the requirement to obtain a permit or approval to construct if the relocation of the air pollution source would be a new source or modification subject to any federal or state permit to construct rule.

(c) A report of change of owner or operator shall be reported to the council within ((~~ninety~~)) 90 days after the change in ownership is effective. Submitting the report of change of ownership does not relieve the owner or operator of other site certification agreement amendment requirements pursuant to chapter 463-66 WAC.

(9) Certification of truth and accuracy. All registrations and reports must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(10) The council shall ensure that the following, as it pertains to sources covered under this rule, is passed on to ecology in a timely manner for inclusion in its permit register:

(a) Public meetings or hearings on draft operating permits;

(b) Receipt of complete applications;

(c) Permit appeals;

(d) Issuance or denial of final permit, permit modifications, or renewals;

(e) Authorization for a source to operate without an operating permit by limiting its potential to emit to levels below those that would require the source to obtain an operating permit;

(f) Periodic summaries of enforcement order and changes made without revising the permit pursuant to WAC 173-401-722.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-135 Criminal penalties. Persons in violation of this chapter may be subject to the provisions of chapter 80.50 RCW and RCW ((~~70.94.422~~)) 70A.15.3130.

AMENDATORY SECTION (Amending WSR 06-06-037, filed 2/23/06, effective 3/26/06)

WAC 463-78-140 Appeals procedure. (1) **Appeal of permits issued pursuant to WAC 173-400-110.**

(a) Any conditions contained in an order of approval, or the denial of a notice of construction application issued by the council pursuant to the requirements of WAC 173-400-110 may be appealed as provided in chapter 34.05 RCW; provided that any order, permit, conditions or denial issued pursuant to WAC 173-400-110 which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall promptly mail copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the notice of construction application, along with a notice advising parties of their rights of appeal.

(2) **Appeal of prevention of significant deterioration permits issued pursuant to WAC 173-400-730.**

(a) A PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit by the council may be appealed as provided in chapter 34.05 RCW; provided that a PSD permit, any conditions contained in a PSD permit, or the denial of a PSD permit which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140. Such an appeal, however, does not stay the effective date of the permit as a matter of federal law.

(b) A PSD permit issued under the terms of a delegation agreement between the EPA and the council can be appealed to the EPA's environmental appeals board as provided in 40 C.F.R. 124.13 and 40 C.F.R. 124.19.

(3) **Appeal of operating permits issued pursuant to chapter 173-401 WAC.**

(a) A decision to issue or to deny a final permit, or the terms or conditions of such a permit issued by the council pursuant to chapter 173-401 WAC, may be appealed as provided in chapter 34.05 RCW, provided that a decision to issue or to deny a final permit, or the terms or conditions of such a permit issued pursuant to chapter 173-401 WAC which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification, shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall identify any appealable decision or determination as such and shall notify the recipient that the decision may be appealed by filing an appeal pursuant to chapter 34.05 RCW.

(c) The provision for appeal in this section is separate from and additional to any federal rights to petition and review under section 505(b) of the federal Clean Air Act, including petitions filed pursuant to 40 C.F.R. 70.8(c) and 70.8(d).

(d) Appealing parties. Parties that may file the appeal referenced in subsection (4)(a) of this section include any person who submitted comment in the public participation process pursuant to WAC 173-401-800.

(e) As provided in RCW 34.05.570, a person may seek a writ of mandamus in the event that the council fails to take final action on an application for a permit, permit renewal, or permit revision within the deadlines specified by WAC 173-401-700 through 173-401-725.

(4) **Appeal of acid rain permits issued pursuant to chapter 173-406 WAC.**

(a) Terms used in this subsection have the definitions given in WAC 173-406-101.

(b) Appeals of the acid rain portion of an operating permit issued by the council that do not challenge or involve decisions or actions of the administrator under 40 C.F.R. parts 72, 73, 75, 77 and 78 and sections 407 and 410 of the act and regulations implementing sections 407 and 410 shall be conducted according to the procedures in chapter 34.05 RCW; provided that appeals of the acid rain portion of an operating permit issued by the council which becomes effective upon final action of the governor according to RCW 80.50.100 on an application for site certification shall be subject to judicial review only pursuant to RCW 80.50.140.

(c) Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 C.F.R. part 78 and section 307 of the act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(d) No administrative appeal or judicial appeal of the acid rain portion of an operating permit shall be allowed more than ((~~thirty~~)) 30 days following respectively issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

(e) The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

(f) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

(i) The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

(ii) Any standard requirement under WAC 173-406-106;

(iii) The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 C.F.R. part 75;

(iv) Uncontested provisions of the decision on appeal; and

(v) The terms of a certificate of representation submitted by a designated representative under subpart B of 40 C.F.R. part 72.

(g) The council will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within ((~~thirty~~)) 30 days of the filing of the appeal.

(h) The council will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with WAC 173-401-810 and 173-401-820.

(5) Appeals from notices of violation issued by the council will be handled via the council's appellate review procedure as provided in WAC 463-70-070 (4)(c).

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-170 Conflict of interest. No member of the council shall have received, or has during the previous two years received, a significant portion of ((~~his or her~~)) their income directly or indirectly from permit holders or applicants for a permit under the jurisdiction of this council.

(1) For the purposes of this section, the term "member" includes any individual who has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal.

(2) For the purpose of this section, the term "permit holders or applicants for a permit" shall not include any department or agency of a state government.

(3) For the purposes of this section, the term "significant portion of ((~~his~~)) their income" shall mean ((~~ten~~)) 10 percent of gross personal income for a calendar year, except that it shall mean ((~~fifty~~)) 50 percent of gross personal income for a calendar year if the recipient is over ((~~sixty~~)) 60 years of age and is receiving such portion pursuant to retirement pension or similar arrangement.

(4) For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(5) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" if it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary source of income.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-230 Regulatory actions. The council may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 80.50.040 or ((~~70.94.422~~)) 70A.15.3130.

(1) Enforcement actions—Notice of violation. At least ((~~thirty~~)) 30 days prior to the commencement of any formal enforcement action under RCW ((~~70.94.430~~)) 70A.15.3150 and ((~~70.94.431~~)) 70A.15.3160 (1) through (7), the council shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or rule or regulation alleged to be violated and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the council may require that the alleged violator or violators appear before it for the purpose of providing information to the council pertaining to the violation or the charges complained of. Every notice of violation shall offer the alleged violator an opportunity to meet with the council prior to the commencement of enforcement action.

(2) Civil penalty.

(a) All penalties assessed as the result of air emission violations shall be consistent with RCW ((~~70.94.332, 70.94.430, 70.94.431~~)) 70A.15.3010, 70A.15.3150, 70A.15.3160 (1) through (7), and ((~~70.94.435~~)) 70A.15.3170. Any person who violates any of the provisions of chapter ((~~70.94~~)) 70A.15 RCW may incur a civil penalty in an

amount as set forth in RCW ((~~70.94.431~~)) 70A.15.3160. Each such violation shall be separate and distinct and, for a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty as set forth by RCW ((~~70.94.431~~)) 70A.15.3160 for each day of continued noncompliance.

(b) Penalties incurred but not paid shall accrue interest, beginning on the ((~~ninety-first~~)) 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the ((~~thirty-first~~)) 31st day following final resolution of the appeal.

The maximum penalty amount established in RCW ((~~70.94.431~~)) 70A.15.3160 may be increased annually to account for inflation as determined by the state office of economic and revenue forecast council.

(c) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW ((~~70.94.422~~)) 70A.15.3130.

(d) All penalties recovered under this section by the council shall be paid into the state treasury and credited to the air pollution control account established in RCW ((~~70.94.015~~)) 70A.15.1010.

(e) In addition to other penalties provided by this chapter, persons knowingly under-reporting emission or other information used to set fees, or persons required to pay emission or permit fees who are more than ((~~ninety~~)) 90 days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(3) Assurance of discontinuance. The chair, or ((~~his/her~~)) their authorized representative, may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter. Any such assurance shall specify a time limit during which discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the superior court.

(4) Restraining orders, injunctions. Whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, the council, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(5) Emergency episodes. The council may issue such orders as authorized by chapter 80.50 RCW, whenever an air pollution episode forecast is declared.

(6) Compliance orders. The council may issue a compliance order in conjunction with a notice of violation. The order shall require the recipient of the notice of violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated.

OTS-5621.1

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-005 Work in unison. The requirements of this chapter((~~,~~)) are based upon chapter 80.70 RCW and are separate and distinct from the requirements found in chapter 463-85 WAC - greenhouse gases performance standard that are based upon chapter 80.80 RCW. These two requirements are required to work in unison with each other in a serial manner. The first requirement is the emissions performance standard under chapters 80.80 RCW and 463-85 WAC. Once that standard is met, the requirements of chapters 80.70 RCW and 463-80 WAC are applied.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-020 Definitions. The definitions in this section are found in RCW 80.70.010 and apply throughout this chapter unless clearly stated otherwise. ((~~The definitions are reprinted below.~~))

"Applicant" has the meaning provided in RCW 80.50.020 and is subject to RCW 80.70.020 (1)(a).

"Carbon credit" means a verified reduction in carbon dioxide or carbon dioxide equivalents that is registered with a state, national, or international trading authority or exchange that has been recognized by EFSEC.

"Carbon dioxide equivalents" means a metric measure used to compare the emissions of various greenhouse gases based upon their global warming potential.

"Certificate holder" means the company that holds a site certification agreement and is authorized to construct and operate an energy facility under chapter 80.50 RCW.

"Cogeneration credit" means the carbon dioxide emissions that EFSEC, department, or authority, as appropriate, estimates would be produced on an annual basis by a stand-alone industrial and commercial facility equivalent in operating characteristics and output to the industrial or commercial heating or cooling process component of the cogeneration plant.

"Cogeneration plant" means a fossil-fueled thermal power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the Public Utility Regulatory Policies Act of 1978.

"Commercial operation" means the date that the first electricity produced by a facility is delivered for commercial sale to the power grid.

"Department" means the department of ecology.

"EFSEC" or "council" means the energy facility site evaluation council created by RCW 80.50.030.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

"Independent qualified organization" means a third-party company or organization that is independent of any energy facility that emits CO_2 and is recognized by the council to receive payment for selection, monitoring, and evaluation of CO_2 emissions mitigation activities.

"Mitigation plan" means a proposal that includes the process or means to achieve carbon dioxide mitigation through use of mitigation projects or carbon credits.

"Mitigation project" means one or more of the following:

(a) Projects or actions that are implemented by the certificate holder directly or through its agent, or by an independent qualified organization to mitigate the emission of carbon dioxide produced by the fossil-fueled thermal electric generation facility. This term includes, but is not limited to, the use of energy efficiency measures, clean and efficient transportation measures, qualified alternative energy resources, demand side management of electricity consumption, and carbon sequestration programs;

(b) Direct application of combined heat and power (cogeneration);

(c) Verified carbon credits traded on a recognized trading authority or exchange; or

(d) Enforceable and permanent reductions in carbon dioxide or carbon dioxide equivalents through process change, equipment shutdown, or other activities under the control of the applicant and approved as part of a carbon dioxide mitigation plan.

"Permanent" means that emission reductions used to offset emission increases are assured for the life of the corresponding increase, whether unlimited or limited in duration.

"Qualified alternative energy resource" has the same meaning as in RCW 19.29A.090.

"Site certification agreement" means the document as recommended by EFSEC and approved by the governor that lists the requirements and conditions for construction and operation of an energy facility, including any attached or associated permits or authorizations, for example a prevention of deterioration permit or notice of construction.

"Station generating capability" means the maximum load a generator can sustain over a given period of time without exceeding design limits, and measured using maximum continuous electric generation capacity, less net auxiliary load, at average ambient temperature and barometric pressure.

"Total carbon dioxide emissions" means:

(a) For a fossil-fueled thermal electric generation facility described under RCW 80.70.020 (1)(a) and (b), the amount of carbon dioxide emitted over a ((~~thirty~~)) 30-year period based on the manufacturer's or designer's guaranteed total net station generating capability, new equipment heat rate, an assumed ((~~sixty~~)) 60 percent capacity factor for facilities under EFSEC's jurisdiction and taking into account any enforceable limitations on operational hours or fuel types and use; and

(b) For a fossil-fueled thermal electric generation facility described under RCW 80.70.020 (1)(c) and (d), the amount of carbon dioxide emitted over a ((~~thirty~~)) 30-year period based on the proposed increase in the amount of electrical output of the facility that exceeds the station generation capability of the facility prior to the applicant applying for certification pursuant to RCW 80.70.020(1), new equipment heat rate, an assumed ((~~sixty~~)) 60 percent capacity factor for facilities under EFSEC's jurisdiction, and taking into account any enforceable limitations on operational hours or fuel types and use.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-030 Carbon dioxide mitigation program applicability. (1) The provisions of this chapter apply to:

(a) New fossil-fueled thermal electric generation facilities with station-generating capability of ((~~three hundred fifty thousand~~)) 350,000 kilowatts or more and fossil-fueled floating thermal electric generation facilities of ((~~one hundred thousand~~)) 100,000 kilowatts or more under RCW 80.50.020 ((~~(15)(a)~~)) (14)(b), for which an application for site certification is made to EFSEC after July 1, 2004; and

(b) Fossil-fueled thermal electric generation facilities with station-generating capability of ((~~three hundred fifty thousand~~)) 350,000 kilowatts or more that have an existing site certification agreement and, after July 1, 2004, apply to EFSEC to increase the output of carbon dioxide emissions by ((~~fifteen~~)) 15 percent or more through permanent changes in facility operations or modification of equipment.

(2) **New facilities.** Any fossil-fueled thermal electric generating facility is required to mitigate CO_2 emissions as described in chapter 80.70 RCW, if the facility meets the following criteria:

(a) An application was received after July 1, 2004; and

(b) The station-generating capability is 350 MWe or greater; or

(c) The facility is a fossil-fueled floating thermal electric generation facility subject to regulation by the energy facility site evaluation council.

(3) **Modifying existing fossil-fueled thermal electric generating facilities.** A fossil-fueled thermal electric generating facility seeking to modify the facility or any electrical generating units is required to mitigate the increase of the emission of CO_2, as described in RCW 80.70.020, when the following occur:

(a) The application was received after July 1, 2004;

(b) The unmodified station generating capability is 350 MWe or greater;

(c) The increase to the facility or units is the greater of the following measures:

(i) An increase in station-generating capability of more than 25 MWe; or

(ii) An increase in CO_2 emissions output by ((~~fifteen~~)) 15 percent or more.

(4) **Examples of fossil-fueled thermal electric generation units.** The following are some examples of fossil-fueled thermal electric generating units:

(a) Coal, oil, natural gas, or coke fueled steam generating units (boilers) supplying steam to a steam turbine - electric generator;

(b) Simple cycle combustion turbine attached to an electric generator;

(c) Combined cycle combustion turbines (with and without duct burners) attached to an electric generator and supplying steam to a steam turbine - electric generator;

(d) Coal gasification units, or similar devices, where the synthesis gas produced is used to fuel a combustion turbine, boiler, or similar device used to power an electric generator or provide hydrogen for use in fuel cells;

(e) Hydrocarbon reformer emissions where the hydrogen produced is used in fuel cells.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-050 Calculating total carbon dioxide emissions to be mitigated. (1) Step 1 is to calculate the total quantity of CO_2. The total quantity of CO_2 is referred to as the maximum potential emissions of CO_2. The maximum potential emissions of CO_2 is defined as the annual CO_2 emission rate. The annual CO_2 emission rate is derived by the following formula unless a differing analysis is necessary or appropriate for the electric generating process and type of equipment:

$$CO_{2rate} = \frac{F_s \times K_s}{2204.6} \times T_s + \frac{F_1 \times K_1}{2204.6} \times T_1 + \frac{F_2 \times K_2}{2204.6} \times T_2 \quad \frac{F_3 \times K_3}{2204.6} \times T_{3\ldots} \quad \frac{F_n \times K_n}{2204.6} \times T_n$$

where:

CO_{2rate}	=	Maximum potential emissions in metric tons per year
F_{1-n}	=	Maximum design fuel firing rate in MMBtu/hour calculated as manufacturer or designer's guaranteed total net station generating capability in MWe times the new equipment heat rate in Btu/MWe. Determined based on higher heating values of fuel
K_{1-n}	=	Conversion factor for the fuel(s) being evaluated in lb CO_2/MMBtu for fuel F_n
T_{1-n}	=	Hours per year fuel F_n is allowed to be used. The default is 8760 hours unless there is a limitation on hours in a site certification agreement
F_s	=	Maximum design supplemental fuel firing rate in MMBtu/hour, at higher heating value of the fuel
K_s	=	Conversion factor for the supplemental fuel being evaluated in lb CO_2/MMBtu for fuel F_n given fuel
T_s	=	Hours per year supplemental fuel F_n is allowed. The default is 8760 hours unless there is a limitation on hours in a site certification agreement

(a) When there are multiple new fossil-fueled electric generating units, the above calculation will be performed for each unit and the total CO_2 emissions of all units will be summed.

(b) When a unit or facility is allowed to use multiple fuels, the maximum allowed hours on the highest CO_2 producing fuels will be utilized for each fuel until the total of all hours per fuel add up to the allowable annual hours.

(c) When a new unit or facility is allowed to use multiple fuels without restriction, this calculation will be performed assuming that the fuel with the highest CO_2 emission rate is used 100% of the time.

(d) When the annual operating hours are restricted for any reason, the total of all T_{1-n} hours equals the annual allowable hours of operation in the site certification agreement.

(e) Fuel to CO_2 conversion factors (derived from the EPA's AP-42, Compilation of Air Pollutant Emission Factors):

Fuel	K_n lb/MMBtu
#2 oil	158.16
#4 oil	160.96
#6 oil	166.67
Lignite	287.50
Sub-bituminous coal	267.22
Bituminous coal, low volatility	232.21
Bituminous coal, medium volatility	241.60

Fuel	K_n lb/MMBtu
Bituminous coal, high volatility	262.38
Natural gas	117.6
Propane	136.61
Butane	139.38
Petroleum coke	242.91
Coal coke	243.1
Other fossil fuels	Calculate based on carbon content of the fossil fuel and application of the gross heat content (higher heating value) of the fuel
Nonfossil fuels	00.00

(2) **Step 2 - Insert the annual CO_2 rate to determine the total carbon dioxide emissions to be mitigated.** The formula below includes specifications that are part of the total carbon dioxide definition:

Total CO_2 Emissions = CO_{2rate} x 30 x 0.6

(3) **Step 3 - Determine and apply the cogeneration credit (if any).** Where the cogeneration unit or facility qualifies for cogeneration credit, the cogeneration credit is the annual CO_2 emission rate (in metric tons per year) and is calculated as shown below or similar method:

$$CO_{2credit} = \frac{H_s}{2204.6} \text{ x } (K_a) \div \text{n}$$

where:

$CO_{2credit}$	=	The annual CO_2 credit for cogeneration in metric tons/year.
H_s	=	Annual heat energy supplied by the cogeneration plant to the "steam host" per the contract or other binding obligation/agreement between the parties in MMBtu/yr as substantiated by an engineering analysis.
K_a	=	The time weighted average CO_2 emission rate constant for the cogeneration plant in lb CO_2/MMBtu supplied. The time-weighted average is calculated similarly to the above method described in subsection (1) of this section.
n	=	Efficiency of new boiler that would provide the same quantity of thermal energy. Assume n = 0.85 unless applicant provides information supporting a different value.

Calculate the metric tons of the cogeneration credit over the 30-year period.

Cogeneration Credit = $CO_{2credit}$ x 30

(4) **Step 4 - Apply the mitigation factor.**

(a) RCW 80.70.020(4) states that "*Fossil-fueled thermal electric generation facilities that receive site certification approval or an order of approval shall provide mitigation for ((~~twenty~~)) 20 percent of the total carbon dioxide emissions produced by the facility.*"

(b) The CO_2 emissions mitigation quantity is determined by the following formula:

Mitigation Quantity = Total CO_2 Emissions x 0.2 - Cogeneration Credit

where:

Mitigation quantity	=	The total CO_2 emissions to be mitigated in metric tons.
CO_{2rate}	=	The annual maximum CO_2 emissions from the generating facility in tons/year.
0.2	=	The mitigation factor in RCW 80.70.020(4).

(5) **Additional restrictions for modifications to an existing facility not involving installation of new generating units.** The quantity of CO_2 to be mitigated is calculated by the same methods used for the new generating units with the following restrictions:

(a) The quantity of CO_2 subject to mitigation is only that resulting from the modification and does not include the CO_2 emissions occurring prior to the modification;

(b) An increase in operating hours or other operational limitations established in a site certification agreement is not an exempt modification under this regulation. However, only increased CO_2 emissions related to the increase in operating hours or changes to any other operational restriction are subject to the CO_2 mitigation program requirements;

(c) The annual emissions (CO_{2rate}) is the difference between the premodification condition and the postmodification condition, but using the like new heat rate for the combustion equipment; and

(d) The cogeneration credit may be used, but only if it is a new cogeneration credit, not a cogeneration agreement or arrangement established prior to July 1, 2004, or used in a prior CO_2 mitigation evaluation.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-060 Carbon dioxide mitigation plan requirements and options. (1) **Once the total carbon dioxide emissions mitigation quantity is calculated, what is next?** The facility must mitigate that level of carbon dioxide emissions. A CO_2 mitigation plan is required and must be approved as part of a site certification agreement. A mitigation plan is a proposal that includes the process or means to achieve carbon dioxide mitigation through use of mitigation projects or carbon credits (RCW 80.70.010).

The approved mitigation plan must be fully implemented and operational in accordance with the schedule in the site certification agreement. The applicant may request an extension of the mitigation project implementation deadline. The request must be submitted in writing to EFSEC before the implementation deadline. The request must fully document the reason(s) more time is needed to implement the mitigation project and propose a revised schedule.

(2) **What are the mitigation plan options?** The options are identified in RCW 80.70.020(3), which states that "*An applicant for a fossil-fueled thermal electric generation facility shall include one or a combination of the following carbon dioxide mitigation options as part of its mitigation plan:*

(a) Payment to a third party to provide mitigation;

(b) Direct purchase of permanent carbon credits; or

(c) Investment in applicant-controlled carbon dioxide mitigation projects, including combined heat and power (cogeneration)."

(3) **What are the requirements of the payment to a third-party option?** The payment to a third-party option requirements are found in RCW 80.70.020 (5) and (6). Subsection (5) identifies the mitigation rate for this option and describes the process for changing the mitigation rate. Subsection (6) describes the payment options.

The initial mitigation rate is **$1.60 per metric ton** of carbon dioxide to be mitigated. If there is a cogeneration plant, the monetary amount is based on the difference between ((~~twenty~~)) 20 percent of the total carbon dioxide emissions and the cogeneration credit. The mitigation rate will change when EFSEC adjusts it through the process described in RCW 80.70.020 (5)(a) and (b). The total payment amount = mitigation rate x mitigation quantity.

An applicant may choose between **a lump sum payment or partial payment over a period of five years.** The **lump sum payment** is described in RCW 80.70.020 (6)(a) and (b). The payment amount is the mitigation quantity multiplied by the per ton mitigation rate. The entire payment amount is due to the independent qualified organization no later than ((~~one hundred twenty~~)) 120 days after the start of commercial operation.

The alternative to a one-time payment is a **partial payment** described in RCW 80.70.020 (6)(c). Under this alternative, ((~~twenty~~)) 20 percent of the total payment is due to the independent qualified organization no later than ((~~one hundred twenty~~)) 120 days after the start of commercial operation. A payment of the same amount (or an adjusted amount if the rate is changed under RCW 80.70.020 (5)(a)) is due on the anniversary date of the initial payment for the next four consecutive years. In addition, the applicant is required to provide a letter of credit or comparable security for the remaining 80% at the time of the first payment. The letter of credit (or comparable security) must also include possible rate changes.

(4) **What are the requirements of the permanent carbon credits option?** RCW 80.70.030 identifies the criteria and specifies that these credits cannot be resold without approval from EFSEC. The permanent carbon credit criteria of RCW 80.70.030(1) are as follows:

(a) Credits must derive from real, verified, permanent, and enforceable carbon dioxide or carbon dioxide equivalents emission mitigation not otherwise required by statute, regulation, or other legal requirements;

(b) The credits must be acquired after July 1, 2004; and

(c) The credits may not have been used for other carbon dioxide mitigation projects.

(5) **What are the requirements for the applicant-controlled mitigation projects option?** RCW 80.70.040 identifies the requirements for applicant-controlled mitigation projects. Subsections (1) through (5) specify the criteria. The direct investment cost of the applicant-controlled mitigation project including funds used for selection, monitoring, and evaluation of mitigation projects cannot be required by EFSEC to exceed the cost of making a lump sum payment to a third-party per subsection (3) of this section.

The applicant-controlled mitigation project must be:

(a) Implemented through mitigation projects conducted directly by, or under the control of the site certification agreement holder;

(b) Approved by EFSEC and incorporated as a condition of the site certification agreement; and

(c) Operational within one year after the start of commercial operation. Failure to implement an approved mitigation plan is subject to enforcement under chapter 80.50 RCW.

(d) The certificate holder may not use more than ((~~twenty~~)) 20 percent of the total funds for the selection, monitoring, and evaluation of mitigation projects, and the management and enforcement of contracts.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-070 Carbon dioxide mitigation option statement and mitigation plan submittal and approval. (1) Applicants must provide EFSEC with a statement selecting the mitigation option(s) in:

(a) Applications for site certification; or

(b) Requests to amend site certification agreements under chapter 463-66 WAC where changes to the facility will increase CO_2 emissions by ((~~fifteen~~)) 15 percent or more.

(2) Applicants choosing to use the payment to a third-party or the permanent carbon credit option must provide EFSEC with the documentation to show how the requirements will be satisfied before a recommendation to the governor is issued or an amendment to a site certification agreement is approved.

(3) Applicants seeking to use the applicant-controlled mitigation projects option must submit the entire mitigation plan to EFSEC. EFSEC will review the plan for consistency with the requirements of chapter 80.70 RCW.

(4) Approval of the mitigation plan will be by:

(a) The governor for approval of the application for site certification, or an amendment to the site certification agreement under WAC 463-66-080; or

(b) EFSEC for approval of an amendment to the site certification agreement under WAC 463-66-070.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-090 Independent qualified organizations list. (1) EFSEC shall develop and maintain a list of independent qualified organizations as required by RCW 80.70.050.

(2) To develop or update the independent qualified organization list, EFSEC shall issue a request for qualifications through use of a mailing list maintained by EFSEC and publication in a regional newspaper in both eastern and western Washington, and other appropriate forums.

(3) Proposals from independent qualified organizations shall, at a minimum, contain the following information:

(a) A demonstration of how the company or organization has successfully developed and managed programs to implement:

- Energy efficiency;
- Renewable energy projects;
- Clean and efficient transportation measures;

• Demand side management of electricity consumption; and
• Carbon sequestration programs.

(b) A complete description of the company or organization's specific expertise in the science and economics of greenhouse gas emissions mitigation, including proven ability to:
• Specify preferred offset types;
• Develop and issue requests for proposals;
• Evaluate and recommend projects;
• Assemble diverse portfolios;
• Negotiate offset contracts;
• Design monitoring and verification protocols, manage the implementation of offset contracts; and
• Maintain an offset registry and retired tons.

(c) Proven experience and demonstrated ability should include staff or organization experience. A new organization made up of experienced employees, or an existing organization with demonstrated accomplishments, should both be able to qualify. However, proven experience and demonstrated ability should be in the specific areas listed in this subsection.

(4) Using best professional judgment, EFSEC staff shall review each proposal and make recommendations to EFSEC whether a company or organization should be placed on the independent qualified organization list.

(5) After reviewing the EFSEC staff recommendations, and prior to making a decision to add a company or an organization to its list of independent qualified organizations, EFSEC may request the organization to testify at a public meeting or hearing to gain additional information and knowledge regarding the organization's experience and qualifications.

(6) Based on the EFSEC staff recommendation and information from public meeting(s) or hearing(s) (if held), EFSEC shall approve or deny companies' or organizations' placement on the list of independent qualified organizations.

(7) EFSEC may remove a company or organization from the independent qualified organization list at the request of the organization, or if EFSEC determines the organization is no longer capable or qualified to carry out CO_2 mitigation programs or activities.

(8) EFSEC shall update its list as it deems appropriate using the process described in this section.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-80-100 Independent qualified organization use of funds. (1) An independent qualified organization shall not use more than ((~~twenty~~)) 20 percent of the total funds it receives for CO_2 mitigation for any of its activities in the selection, monitoring, or evaluation of a project.

(2) No independent qualified organization shall use any funds received for CO_2 mitigation to lobby federal, state, or local agencies, their elected officials, officers, or employees.

(3) If EFSEC finds that an independent qualified organization has violated subsection((~~s~~)) (1) or (2) of this section, EFSEC may:

(a) Require the independent qualified organization to refund to the applicant or certificate holder the amount EFSEC determines was wrongfully spent; and

(b) Remove the organization from its list of independent qualified organizations.

(4) An organization found by EFSEC to have violated subsection((~~s~~)) (1) or (2) of this section and removed from EFSEC's list of independent qualified organizations may not apply or request listing on EFSEC's list for a period of four years after removal from the list.

OTS-5622.1

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-85-110 Definitions. The following definitions apply when these terms are used in the provisions of this chapter.

"Average available greenhouse gases emissions output" means the level of greenhouse gases emissions as surveyed and determined by the energy policy division of the department of ((~~community, trade, and economic development~~)) commerce under RCW 80.80.050.

"Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least ((~~sixty~~)) 60 percent. For a cogeneration facility, the ((~~sixty~~)) 60 percent annual capacity factor applies to only the electrical production intended to be supplied for sale. For purposes of this rule, designed means originally specified by the design engineers for the power plant or generating units (such as simple cycle combustion turbines) installed at a power plant; and intended means allowed for by the current permits for the power plant, recognizing the capability of the installed equipment or intent of the owner or operator of the power plant.

"Baseload electric cogeneration facility" means a cogeneration facility that provides baseload electric generation.

"Baseload electric generation facility" means a power plant that provides baseload electric generation.

"Benchmark" means a planned quantity of the greenhouse gases to be sequestered each calendar year at a sequestration facility as identified in the sequestration plan or sequestration program.

"Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy application or process, and at least some of the reject heat emerging from the application or process is then used for electrical power production.

"Change in ownership" as related to cogeneration plants means a new ownership interest in the electric generation portion of the cogeneration facility or unit.

"Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets Federal Energy Regulatory Commission standards for qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 824a-3), as amended. In general, a cogen-

eration facility is comprised of equipment and processes which through the sequential use of energy is used to produce electric energy and useful thermal energy (such as heat or steam) that is used for industrial, commercial, heating, or cooling purposes.

"Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

"Commence commercial operation" means, in regard to a unit serving an electric generator, to have begun to produce steam or other heated medium, or a combustible gas used to generate electricity for sale or use, including test generation.

"Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

"Department" or "ecology" means the department of ecology.

"Electric generating unit (EGU)" is the equipment required to convert the thermal energy in a fuel into electricity. In the case of a steam electric generation unit, the EGU consists of all equipment involved in fuel delivery to the plant site, as well as individual boilers, any installed emission control equipment, and any steam turbine/generators dedicated to generating electricity. Where a steam turbine/generator is supplied by two or more boiler units, all boilers contributing to that steam turbine/generator comprise a single electric generating unit. All combustion units/boilers/combined-cycle turbines that produce steam for use in a single steam turbine/generator unit are part of the same electric generating unit.

Examples:

(a) For an integrated gasification combined-cycle combustion turbine plant, the EGU consists of all equipment involved in fuel delivery to the unit, as well as all equipment used in the fuel conversion and combustion processes, any installed emission control equipment, and all equipment used for the generation of electricity.

(b) For a combined-cycle natural gas fired combustion turbine, the EGU begins at the point where natural gas is delivered to the plant site and ends with the generation of electricity from the combustion turbine and from steam produced and used on a steam turbine.

(c) An EGU also concludes fuel cells fueled by hydrogen produced:

(i) In a reformer utilizing nonrenewable fuels; or

(ii) By a gasifier producing hydrogen from nonrenewable fuels.

"EFSEC" or "council" means the energy facility site evaluation council.

"Electric utility" means an electrical company or a consumer-owned utility.

"Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

"Greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

"MWh" = megawatt-hour electricity.

"MWh_{eq}" = megawatt-hour equivalent electrical energy of useful thermal energy output. 1 MWh_{eq} = 3.413 million Btu of thermal energy.

"New ownership interest" means a change in the ownership structure of a baseload power plant or a cogeneration facility or the electrical generation portion of a cogeneration facility affecting at least:

(a) Five percent of the market value of the power plant or cogeneration facility; or

(b) Five percent of the electrical output of the power plant or cogeneration facility.

The above thresholds apply to each unit within a multi-unit generation facility.

"Permanent sequestration" means the retention of greenhouse gases in a containment system using a method that is in accordance with standards approved by the department of ecology and that creates a high degree of confidence that substantially ((~~ninety-nine~~)) 99 percent of the greenhouse gases will remain contained for at least ((~~one thousand~~)) 1,000 years.

"Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

"Power plant" means a facility for the generation of electricity that is permitted as a single plant by the energy facility site evaluation council. A power plant may be comprised of one or more individual electrical generating units, each unit of which can be operated or owned separately from the other units.

"Regulated greenhouse gases emissions" is the mass of carbon dioxide emitted plus the mass of nitrous oxide emitted plus the mass of methane emitted. Regulated greenhouse gases emissions include carbon dioxide produced by a sulfur dioxide control system such as a wet limestone scrubber system.

"Renewable fuel" means:

(a) Landfill gas;

(b) Biomass energy utilizing animal waste, solid organic fuels from wood, forest, or field residues or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic;

(c) By-products of pulping or wood manufacturing processes, including but not limited to bark, wood chips, sawdust, and lignin in spent pulping liquors; or

(d) Gas from sewage treatment facilities.

"Renewable resources" means electricity generation facilities fueled by renewable fuels plus electricity generation facilities fueled by:

(a) Water;

(b) Wind;

(c) Solar energy;

(d) Geothermal energy; or

(e) Ocean thermal, wave, or tidal power.

"Sequential use of energy" means:

(a) For a topping-cycle cogeneration facility, the use of reject heat from a power production process in sufficient amounts in a thermal application or process to conform to the requirements of the operating standard; or

(b) For a bottoming-cycle cogeneration facility, the use of reject heat from a thermal application or process, at least some of which is then used for power production.

"Sequestration plan" means a comprehensive plan describing how a plant owner or operator will comply with the emissions performance standard by means of sequestering greenhouse gases, where the sequestration will start after electricity is first produced, but within five years of the start of commercial operation.

"Sequestration program" means a comprehensive plan describing how a baseload electric generation plant's owner or operator will demonstrate compliance with the emissions performance standard at start of commercial operation and continuing unchanged into the future. The program is a description of how the facility meets the emissions performance standard based on the characteristics of the baseload electric generation facility or unit or by sequestering greenhouse gases emissions to meet the emissions performance standard with the sequestration starting on or before the start of commercial operation.

"Supplementary firing" means an energy input to:

(a) A cogeneration facility used only in the thermal process of a topping-cycle cogeneration facility;

(b) The electric generating process of a bottoming-cycle cogeneration facility; or

(c) Any baseload electric generation unit to temporarily increase the thermal energy that can be converted to electrical energy.

"Topping-cycle cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful electrical power output, and at least some of the reject heat from the power production process is then used to provide useful thermal energy.

"Total energy input" means the total energy supplied by all fuels used to produce electricity in a baseload electric generation facility or unit.

"Total energy output" of a topping-cycle cogeneration facility or unit is the sum of the useful electrical power output and useful thermal energy output.

"Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility or unit. Upgrade does not include:

(a) Routine or necessary maintenance;

(b) Installation of emission control equipment;

(c) Installation, replacement, or modification of equipment that improves the heat rate of the facility; or

(d) Installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity.

"Useful energy output" of a cogeneration facility means the electric or mechanical energy made available for use, exclusive of any such energy used in the power production process.

"Useful thermal energy output" of a cogeneration facility means the thermal energy:

(a) That is made available to and used in an industrial or commercial process (minus any heat contained in condensate return and/or makeup water);

(b) That is used in a heating application (e.g., space heating, domestic hot water heating); or

(c) That is used in a space cooling application (i.e., thermal energy used by an absorption chiller).

"Waste gas" is refinery gas and other fossil fuel derived gases with a heat content of more than 300 Btu/standard cubic foot. Waste gas does not include gaseous renewable energy sources.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-85-130 Emissions performance standard. (1) Beginning July 1, 2008, all baseload electric generation facilities or units and baseload electric cogeneration facilities and units subject to WAC 463-85-120 are not allowed to emit to the atmosphere regulated greenhouse gases at a rate greater than ((~~1100 pounds per megawatt-hour, annual average~~)) the amounts established in WAC 194-26-020, average available greenhouse gases emissions output, as now or hereafter amended.

(2) All baseload electric generation facilities and units in operation on or before June 30, 2008, are deemed to be in compliance with the emissions performance standard until the facility or unit is subject to a new long-term financial commitment.

(3) All baseload electric cogeneration facilities and units in operation on or before June 30, 2008, and operating exclusively on natural gas, waste gas, a combination of natural and waste gases, or a renewable fuel, are deemed to be in compliance with the emissions performance standard until the facility or unit is subject to a new ownership interest or is upgraded. For purposes of WAC 463-85-130, exclusive use of renewable fuel shall mean at least ((~~ninety~~)) 90 percent of total annual heat input by a renewable fuel.

(4) Compliance with the emissions performance standard may be through:

(a) Use of fuels and power plant designs that comply with the emissions performance standard without need for greenhouse gases emission controls; or

(b) Use of greenhouse gases emission controls and greenhouse gases sequestration methods meeting the requirements of WAC 463-85-220 or 173-218-115 as appropriate.

(5) The greenhouse gases emissions performance standard in subsection (1) of this section applies to all baseload electric generation for which electric utilities enter into long-term financial commitments on or after July 1, 2008.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-85-140 Calculating greenhouse gases emissions and determining compliance for baseload electric generation facilities. (1) The owner or operator of a baseload electric generation facility or unit that must demonstrate compliance with the emissions performance standard in WAC 463-85-130(1) shall collect the following data:

(a) Fuels and fuel feed stocks.

(i) All fuels and fuel feed stocks used to provide energy input to the baseload electric generation facility or unit.

(ii) Fuel usage and heat content, which are to be monitored, and reported as directed by WAC 463-85-230.

(b) Electrical output in MWh as measured and recorded per WAC 463-85-230.

(c) Regulated greenhouse gases emissions from the baseload electric generation facility or unit as monitored, reported, and calculated in WAC 463-85-230.

(d) Adjustments for use of renewable resources. If the owner or operator of a baseload electric generation facility or unit adjusts its greenhouse gases emissions to account for the use of renewable resources, greenhouse gases emissions are reduced based on the ratio of the annual heat input from all fuels and fuel feed stocks and the annual heat input from use of nonrenewable fuels and fuel feed stocks. Such adjustment will be based on records of fuel usage and representative heat contents approved by EFSEC or ecology as appropriate.

(2) By January 31st of each year, the owner or operator of each baseload electric generation facility or unit subject to the monitoring and compliance demonstration requirements of this rule will:

(a) Use the data collected under subsection (1) of this section to calculate the pounds of regulated greenhouse gases emissions emitted per MWh of electricity produced during the prior calendar year by dividing the regulated greenhouse gases emissions by the total MWh produced in that year; and

(b) Submit that calculation and all supporting information to EFSEC.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-85-150 Calculating greenhouse gases emissions and determining compliance for baseload cogeneration facilities. (1) To use this section for determining compliance with the greenhouse gases emissions performance standard, a facility must have certified to the Federal Energy Regulatory Commission (FERC) under the provisions of 18 C.F.R. 292 Subpart B as a qualifying cogeneration facility.

(2) The owner or operator of a baseload electric cogeneration facility or unit that must demonstrate compliance with the emissions performance standard in WAC 463-85-130(1) shall collect the following data:

(a) Fuels and fuel feed stocks.

(i) All fuels and fuel feed stocks used to provide energy input to the baseload electric cogeneration facility or unit.

(ii) Fuel and fuel feed stocks usage and heat content, which are to be monitored((~~,~~)) and reported as directed by WAC 463-85-230.

(b) Electrical output in MWh as measured and recorded per WAC 463-85-230.

(c) All useful thermal energy and useful energy used for nonelectrical generation uses converted to units of megawatts energy equivalent (MW_{eq}) using the conversion factor of 3.413 million British thermal units per megawatt hour (MMBtu/MWh).

(d) Regulated greenhouse gases emissions from the baseload electric cogeneration facility or unit as monitored, reported, and calculated in WAC 463-85-230.

(e) Adjustments for use of renewable resources. If the owner or operator of a baseload electric cogeneration facility or unit adjusts its greenhouse gases emissions to account for the use of renewable resources, the greenhouse gases emissions are reduced based on the ratio of the annual heat input from all fuels and fuel feed stocks and the annual heat input from use of nonrenewable fuels and fuel feed stocks. Such adjustment will be based on records of fuel usage and representative heat contents approved by ecology.

(3) Bottoming-cycle cogeneration facilities. The formula to determine compliance of a bottoming-cycle cogeneration facility or unit with the emissions performance standard will be jointly developed by ecology and the facility. To the extent possible, the facility-specific formula must be based on the one for topping-cycle facilities identifying the amount of energy converted to electricity, thermal losses, and energy from the original fuel(s) used to provide useful thermal energy in the industrial process. The formula should be specific to the installed equipment, other thermal energy uses in the facility, and specific operating conditions of the facility.

(4) Topping-cycle cogeneration facilities. To demonstrate compliance with the emissions performance standard, a topping-cycle facility or unit must:

(a) Determine annual electricity produced in MWh.

(b) Determine the annual electrical energy equivalent of the useful thermal energy output in MWh_{eq}.

(c) Determine the annual regulated greenhouse gases emissions produced in pounds.

(5) By January 31st of each year, the owner or operator of each baseload electric cogeneration facility or unit subject to the monitoring and compliance demonstration requirements of this rule will:

(a) Calculate the pounds of regulated greenhouse gases emissions emitted per MWh of electricity produced during the prior calendar year by dividing the regulated greenhouse gases emissions by the sum of the MWh and MWh_{eq} produced in that year; and

(b) Submit that calculation and all supporting information to EFSEC or ecology as appropriate.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-85-220 Requirements for nongeologic permanent sequestration plans and sequestration programs. In order to meet the emissions performance standard, all baseload electric generation facilities or individual units that are subject to this rule, and must use nongeologic sequestration of greenhouse gases to meet the emissions perform-

ance standard, will submit sequestration plans or sequestration programs for approval to EFSEC or ecology, as appropriate.

(1) Sequestration plans and sequestration programs must include:

(a) Financial requirements. As a condition of plant operation, each owner or operator of a baseload electric generation facility or unit or baseload electric cogeneration facility or unit utilizing non-geologic sequestration as a method to comply with the emission performance standard in WAC 463-85-130 is required to provide a letter of credit sufficient to ensure successful implementation, closure, and post-closure activities identified in the sequestration plan and sequestration program, including construction and operation of necessary equipment, and any other significant costs.

(i) The owner or operator of a proposed sequestration project shall establish a letter of credit to cover all expenses for construction and operation of necessary equipment, and any other significant costs. The cost estimate for the sequestration project shall be revised annually to include any changes in the project and to include cost changes due to inflation.

(ii) Closure and post-closure financial assurances. The owner or operator shall establish a closure and a post-closure letter of credit to cover all closure and post-closure expenses, respectively. The owner or operator must designate EFSEC as the beneficiary to carry out the closure and post-closure activities. The value of the closure and post-closure accounts shall cover all costs of closure and post-closure care identified in the closure and post-closure plan. The closure and post-closure cost estimates shall be revised annually to include any changes in the sequestration project and to include cost changes due to inflation. The obligation to maintain the account for closure and post-closure care survives the termination of any permits and the cessation of injection. The requirement to maintain the closure and post-closure accounts is enforceable regardless of whether the requirement is a specific condition of the permit.

(b) The application for approval of a sequestration plan or sequestration program shall include (but is not limited to) the following:

(i) A current site map showing the boundaries of the permanent sequestration project containment system(s) and all areas where greenhouse gases will be stored.

(ii) A technical evaluation of the proposed project, including but not limited to, the following:

(A) The name of the area in which the sequestration will take place;

(B) A description of the facilities and place of greenhouse gases containment system;

(C) A complete site description of the site, including but not limited to the terrain, the geology, the climate (including rain and snowfall expected), any land use restrictions that exist at the time of the application or will be placed upon the site in the future;

(D) The proposed calculated maximum volume of greenhouse gases to be sequestered and areal extent of the location where the greenhouse gases will be stored using a method acceptable to and filed with EFSEC or ecology as appropriate; and

(E) Evaluation of the quantity of sequestered greenhouse gases that may escape from the containment system at the proposed project.

(iii) A public safety and emergency response plan for the proposed project. The plan shall detail the safety procedures concerning the sequestration project containment system and residential, commer-

cial, and public land use within one mile, or as necessary to identify potential impacts, of the outside boundary of the project area.

(iv) A greenhouse gases loss detection and monitoring plan for all parts of the sequestration project. The approved greenhouse gases loss detection and monitoring plan shall address identification of potential release to the atmosphere;

(v) A detailed schedule of annual benchmarks for sequestration of greenhouse gases;

(vi) Any other information that the department deems necessary to make its determination;

(vii) A closure and post-closure plan.

(c) In order to monitor the effectiveness of the implementation of the sequestration plan or sequestration program, the owner or operator shall submit a detailed monitoring plan that will ensure detection of failure of the sequestration method to place the greenhouse gases into a sequestered state. The monitoring plan will be sufficient to provide reasonable assurance that the sequestration provided by the project meets the definition of permanent sequestration. The monitoring shall continue for the longer of ((~~twenty~~)) 20 years beyond the end of placement of the greenhouse gases into sequestration containment system, or ((~~twenty~~)) 20 years beyond the date upon which it is determined that all of the greenhouse gases have achieved a state at which they are now stably sequestered in that environment.

(d) If the sequestration plan or sequestration program fails to sequester greenhouse gases as provided in the plan or program, the owner or operator of the baseload electric generation facility or unit or baseload electric cogeneration facility or unit is no longer in compliance with the emissions performance standard.

(2) **Public notice and comment.** ESFEC must provide public notice and a public comment period before approving or denying any sequestration plan or sequestration program.

(a) Public notice. Public notice shall be made only after all information required by the permitting authority has been submitted and after applicable preliminary determinations, if any, have been made. The applicant or other initiator of the action must pay the cost of providing public notice. Public notice shall include analyses of the effects on the local, state, and global environment in the case of failure of the sequestration plan or sequestration program. The sequestration plan or sequestration program must be available for public inspection in at least one location near the proposed project.

(b) Public comment.

(i) The public comment period must be at least ((~~thirty~~)) 30 days long or may be longer as specified in the public notice.

(ii) The public comment period must extend through the hearing date.

(iii) EFSEC shall make no final decision on any sequestration plan or sequestration program until the public comment period has ended and any comments received during the public comment period have been considered.

(c) Public hearings.

(i) EFSEC will hold a public hearing within the ((~~thirty~~)) 30-day public comment period. EFSEC will determine the location, date, and time of the public hearing.

(ii) EFSEC must provide at least ((~~thirty~~)) 30 days prior notice of a hearing on a sequestration plan or sequestration program.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-85-230 Emissions and electrical production monitoring, recordkeeping, and reporting requirements. (1) Monitoring and recordkeeping requirements. For all baseload electric generation facilities or units and baseload electric cogeneration facilities or units subject to WAC 463-85-120, the following parameters shall be monitored and reported as explained below:

(a) Electrical output: Electrical output as measured at the point of connection with the local electrical distribution network or transmission line, as appropriate. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating compliance with the greenhouse gases emissions performance standard;

(b) Useful thermal energy output: Quantity of energy supplied to nonelectrical production uses determined by monitoring both the energy supplied and the unused energy returned by the thermal energy user or uses. The required monitoring can be accomplished through:

(i) Measurement of the mass, pressure, and temperature of the supply and return streams of the steam or thermal fluid; or

(ii) Use of thermodynamic calculations as approved by ecology.

(iii) Measurements will be on an hourly or daily basis and recorded in a form suitable for use in calculating compliance with the greenhouse gases emissions performance standard; and

(c) Regulated greenhouse gases emissions.

(i) The regulated greenhouse gases emissions are the emissions of regulated greenhouse gases from the main plant exhaust stack and any bypass stacks or flares. For baseload electric generation facilities or units and baseload electric cogeneration facilities or units utilizing CO_2 controls and sequestration to comply with the greenhouse gases emissions performance standard, direct and fugitive CO_2 emissions from the CO_2 separation and compression process are included.

(ii) Carbon dioxide (CO_2).

(A) For baseload electric generation facilities or units and baseload electric cogeneration facilities or units subject to WAC 463-85-120, producing 350 MW or more of electricity, CO_2 emissions will be monitored by a continuous emission monitoring system meeting the requirements of 40 C.F.R. Sections 75.10 and 75.13 and 40 C.F.R. Part 75 Appendix F. If allowed by the requirements of 40 C.F.R. Part 72, a facility may estimate CO_2 emissions through fuel carbon content monitoring and methods meeting the requirements of 40 C.F.R. Sections 75.10 and 75.13 and 40 C.F.R. Part 75 Appendix G.

(B) When the monitoring data from a continuous emission monitoring system does not meet the completeness requirements of 40 C.F.R. Part 75, the baseload electric generation facility operator or operator will substitute data according to the process in 40 C.F.R. Part 75.

(C) Continuous emission monitors for CO_2 will be installed at a location meeting the requirements of 40 C.F.R. Part 75, Appendix A. The CO_2 and flow monitoring equipment must meet the quality control and quality assurance requirements of 40 C.F.R. Part 75, Appendix B.

(iii) Nitrous oxide (N_2O). For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 463-85-120 producing 350 MW or more of electricity, N_2O emissions shall be determined as follows:

(A) For the first year of operation, N_2O emissions are estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(B) For succeeding years, N_2O emissions will be estimated through use of generating unit specific emission factors derived through use of emissions testing using ecology or Environmental Protection Agency approved methods. The emission factor shall be derived through testing N_2O emissions from the stack at varying loads and through at least four separate test periods spaced evenly throughout the first year of commercial operation.

(iv) Methane (CH_4). For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 173-407-120 producing 350 MW or more of electricity, CH_4 emissions shall be determined as follows:

(A) For the first year of operation, CH_4 emissions are estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency, or other authoritative source as approved by ecology for use by the facility.

(B) For succeeding years, CH_4 emissions will be estimated through use of plant specific emission factors derived through use of emissions testing using ecology or Environmental Protection Agency approved methods. The emission factor shall be derived through testing CH_4 emissions from the stack at varying loads and through at least four separate test periods spaced evenly through the first year of commercial operation.

(d) Fuel usage and heat content information.

(i) Fossil fuel usage will be monitored by measuring continuous fuel volume or weight as appropriate for the fuel used. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating greenhouse gases emissions.

(ii) Renewable energy fuel usage will be monitored by measuring continuous fuel volume or weight as appropriate for the fuel used. Measurement will be on an hourly or daily basis and recorded in a form suitable for use in calculating greenhouse gases emissions.

(iii) Heat content of fossil fuels shall be tested at least once per calendar year. The owner or operator of the baseload electric generation facility or unit shall submit a proposed fuel content monitoring program to EFSEC for EFSEC's approval. Upon request and submission of appropriate documentation of fuel heat content variability, EFSEC may allow a source to:

(A) Test the heat content of the fossil fuel less often than once per year; or

(B) Utilize representative heat content for the renewable energy source instead of the periodic monitoring of heat content required above.

(iv) Renewable energy fuel heat content will be tested monthly or with a different frequency approved by EFSEC. A different frequency will be based on the variability of the heat content of the renewable energy fuel.

(A) If the baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 463-85-120 using a mixture of renewable and fossil fuels do not adjust

their greenhouse gases emissions by accounting for the heat input from renewable energy fuels, monitoring of the heat content of the renewable energy fuels is not required.

(B) Upon request and with appropriate documentation, EFSEC may allow a source to utilize representative heat content for the renewable energy source instead of the periodic monitoring of heat content required above.

(2) Reporting requirements. The results of the monitoring required by this section shall be reported to EFSEC and ecology annually.

(a) Facilities or units subject to the reporting requirements of 40 C.F.R. Part 75. Annual emissions of CO_2, N_2O, and CH_4 will be reported to ecology and EFSEC by January 31 of each calendar year for emissions that occurred in the previous calendar year. The report may be an Excel™ or CSV format copy of the report submitted to EPA per 40 C.F.R. Part 75 with the emissions for N_2O and CH_4 appended to the report.

(b) For facilities or units not subject to the reporting requirements of 40 C.F.R. Part 75, annual emissions of CO_2, N_2O, and CH_4 and supporting information will be reported to ecology and the air quality permitting authority with jurisdiction over the facility by January 31 of each calendar year for emissions that occurred in the previous calendar year.

AMENDATORY SECTION (Amending WSR 08-14-064, filed 6/25/08, effective 7/26/08)

WAC 463-85-240 Enforcement of the emissions performance standard on schedule. Any power plant subject to WAC 463-85-120 that does not meet the emissions performance standard on schedule shall be subject to enforcement under chapter 80.50 RCW.

(1) Penalties can include:

(a) Financial penalties, which shall be assessed after any year of failure to meet a sequestration benchmark established in the sequestration plan or sequestration program. Each pound of greenhouse gases above the emissions performance standard will constitute a separate violation, as averaged on an annual basis;

(b) Revocation of approval to construct the source or to operate the source.

(2) If a new, modified, or upgraded baseload electric generation facility or unit or baseload electric cogeneration facility or unit fails to meet a sequestration plan or sequestration program benchmark on schedule, a revised sequestration plan or sequestration program will be required to be submitted no later than ((~~one hundred fifty~~)) 150 calendar days after the due date established under subsection (3)(c) of this section for reporting the failure. The revised sequestration plan or sequestration program is to be submitted to EFSEC, as appropriate, for approval.

(3) Provisions for unavoidable circumstances.

(a) The owner or operator of a facility operated under an approved sequestration plan or sequestration program shall have the burden of proving to EFSEC in an enforcement action that failure to meet a sequestration benchmark was unavoidable. This demonstration shall be

a condition to obtaining relief under (d), (e), and (f) of this subsection.

(b) Failure to meet a sequestration benchmark determined to be unavoidable under the procedures and criteria in this section shall be excused and not subject to financial penalty.

(c) Failure to meet a sequestration benchmark shall be reported by January 31 of the year following the year during which the event occurred or as part of the routine sequestration monitoring reports. Upon request by EFSEC, the owner(s) or operator(s) of the sequestration project source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(d) Failure to meet a sequestration benchmark due to startup or shutdown conditions shall be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that the failure to meet a sequestration benchmark could not have been prevented through careful planning and design and if a bypass of equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(e) Maintenance. Failure to meet a sequestration benchmark due to scheduled maintenance shall be considered unavoidable if the source reports as required under (c) of this subsection, and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance, or ((~~through~~)) better operation and maintenance practices.

(f) Failure to meet a sequestration benchmark due to upsets shall be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that:

(i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(ii) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(iii) The operator took immediate and appropriate corrective action in a manner consistent with good practice for minimizing nonsequestration during the upset event.

(4) Enforcement for permit violations. Enforcement of any part of an EFSEC site certification agreement will proceed in accordance with RCW 80.50.150.

WSR 24-15-139
EXPEDITED RULES
DEPARTMENT OF AGRICULTURE
[Filed July 23, 2024, 4:24 p.m.]

Title of Rule and Other Identifying Information: Chapter 24-12 WAC, Washington apple commission.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making amends the Washington apple commission WAC by removing gender-specific pronouns and replacing them with terms that are consistent throughout the chapter.

Reasons Supporting Proposal: This rule making was brought forward through a petition from a member of the public. This rule making clarifies the language without changing intent.

Statutory Authority for Adoption: RCW 15.24.073.

Statute Being Implemented: Chapter 15.24 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington apple commission, governmental.

Name of Agency Personnel Responsible for Drafting: Megan Finkenbinder, 1111 Washington Street S.E., Olympia, 360-902-1887; Implementation and Enforcement: Todd Fryhover, 2900 Euclid Avenue, Wenatchee, 509-663-9600.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Expedited process is appropriate due to name changes and no impact to rule effects.

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 Megan Finkenbinder, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504, phone 360-902-1887, fax 360-902-2092, email mfinkenbinder@agr.wa.gov, BEGINNING August 7, 8:00 a.m., AND RECEIVED BY September 24, 11:59 p.m.

July 23, 2024
Derek I. Sandison
Director

OTS-5660.1

AMENDATORY SECTION (Amending WSR 19-24-098, filed 12/4/19, effective 1/4/20)

WAC 24-12-011 Referendum mail ballot voting eligibility. (1) In the conduct of a referendum mail ballot pursuant to the provisions of

RCW 15.24.090 the commission shall require that each returned ballot be accompanied by a completed apple grower eligibility certificate in substantially the following form:

WASHINGTON APPLE COMMISSION
APPLE GROWER ELIGIBILITY CERTIFICATE

(Note: All appropriate spaces on this certificate must be completed to properly qualify your vote.)

I HEREBY CERTIFY THAT:

1. My name and address are as follows (please print):

   Name: .....

   Mailing Address: .....

   Orchard Address: .....

   City: ..... State: .....

2. I am qualified to vote for one of the following reasons (please check the appropriate space):

   a ..... I am an individual owner-operator or an individual lessee-operator of commercially producing apple orchard/ orchards.

   b ..... I am a member of and have been designated to cast the single ballot for (please fill in name), a partnership, joint venture or corporation owning/leasing and operating commercially producing apple orchard/orchards.

3. I take my fresh apple crop to the following dealer organizations to pack/ship my fruit. (Please list all that apply to this orchard.)

   By signing this certificate, I grant the commission permission to contact dealer(s) listed above to verify total net lbs. fresh apples shipped in the two prior crop years.

   .....
   Signature of Voter

   Name (print). .....

   Date .....

Note: A completed apple grower eligibility certificate must accompany each ballot.

(2) The commission shall contact each dealer listed on the apple grower eligibility certificate to verify total net lbs. fresh apples shipped in the last two crop years by voting grower.

(3) The commission and the director of the department of agriculture may, in counting and validating ballots, rely on and accept the representations of eligibility to vote and the representations of total net lbs. fresh apples shipped by grower as certified by dealer.

(4) Apple growers entitled to vote in a referendum mail ballot pursuant to the provisions of RCW 15.24.090 are defined to be each grower who operates a commercial producing apple orchard, whether an individual proprietor, partnership, joint venture, or corporation, being entitled to one vote. As to bona fide leased or rented orchards, only the lessee-operator, if otherwise qualified, shall be entitled to vote. Individual commercial orchard operator, if otherwise qualified, shall be entitled to vote as such, even though ((~~he~~)) the commercial orchard operator is also a member of a partnership or corporation that votes for other apple acreage.

(5) A commercial producing apple orchard means an apple orchard currently producing or growing apples in sufficient quantity so that

the apples are or will be marketed through prevailing commercial channels and are or will be subject to assessment pursuant to the provisions of chapter 15.24 RCW.

WSR 24-15-153
EXPEDITED RULES
DEPARTMENT OF TRANSPORTATION
[Filed July 24, 2024, 10:48 a.m.]

Title of Rule and Other Identifying Information: WAC 468-58-030 Limited access highways—Policies on commercial approaches, common carrier and school bus stops, mail box locations and pedestrian crossings.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this revision is to update WAC 468-58-030 terminology to align to the Manual on Uniform Traffic Control Devices (MUTCD).

Reasons Supporting Proposal: To align terminology with the current MUTCD.

Statutory Authority for Adoption: RCW 47.52.020, 47.36.050, 47.36.030.

Statute Being Implemented: RCW 47.52.020, 47.36.050, 47.36.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting: Jessi Henderson, Olympia, Headquarters, 360-705-7289; Implementation and Enforcement: Trevor McCain, Olympia, Headquarters, 360-705-7282.

This notice meets the following criteria to use the expedited adoption process for these rules:

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, makes address or name changes, or clarifies language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: This expedited adoption only updates the terminology to align with current standards and does not change its effect.

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 Steve Larsen, Washington State Department of Transportation, P.O. Box 47418, 310 Maple Park Avenue S.E., Olympia, WA 98504-7418, phone 360-705-7738, email wac@wsdot.wa.gov, BEGINNING August 7, 2024, AND RECEIVED BY September 23, 2024, 5:00 p.m.

July 24, 2024
Sam Wilson, Director
Business Support Services

OTS-5662.1

AMENDATORY SECTION (Amending WSR 79-08-061, filed 7/23/79)

WAC 468-58-030 Limited access highways—Policies on commercial approaches, common carrier and school bus stops, mail box locations and pedestrian crossings. (1) **Fully controlled limited access highways:**

(a) No commercial approaches shall be permitted direct access to main roadway but only to frontage roads when these are provided in the access plan or to the crossroads of interchanges outside the limits of full access control.

(b) No common carrier bus stops other than required by law shall be permitted except at locations provided by the state on the interchanges or, in exceptional cases, along the main roadway where pedestrian separation is available.

(c) School bus stops shall not be permitted except as in ((~~subparagraph~~)) (b) of this subsection.

(d) No mail boxes shall be permitted except on frontage roads.

(e) Pedestrian crossings shall not be permitted at grade.

(2) **Partially controlled limited access highways:**

(a) No commercial approaches shall be permitted except on frontage roads provided in the access plan or at intersections.

(b) Bus stops for both common carriers and school buses shall not be permitted other than as required by law on either two or four lane highways, except as follows:

(i) At locations of intersections, with necessary lanes to be constructed by the state;

(ii) Where shoulder widening has been provided for mail delivery service;

(iii) For a designated school bus ((~~loading zone~~)) stop on the traveled lane or adjacent thereto which has been approved by the department of transportation.

(c) Pedestrian grade crossings will be permitted only where a grade crossing is provided, except that pedestrian crossings will be permitted on two lane highways at mail box locations or at points designated for school children to cross as provided in ((~~subparagraph~~)) (d) of this subsection.

(d) Pedestrian crossings are prohibited in the immediate vicinity of school bus ((~~loading zones~~)) stops which are located adjacent to the traveled way. Pedestrian crossings may be permitted:

(i) On two lane highways not less than ((~~one hundred~~)) 100 feet from a school bus ((~~loading zone~~)) stop adjacent to the traveled lane, if school district and department of transportation personnel determine that stopping in the traveled lane is hazardous.

(ii) On two lane highways at the school bus when stopped on the traveled lane to load or unload passengers and the proper sign and signal lights displayed.

(e) School bus ((~~loading zones~~)) stops on partially controlled access highways shall be posted with school bus ((~~loading zone~~)) stop signs, in accordance with the latest edition of the Manual on Uniform Traffic Control Devices.

(f) The list of designated school bus ((~~loading zones~~)) stops approved by the department of transportation will be kept on file and maintained by the headquarters traffic engineer.

(g) Mail boxes shall be located on frontage roads or at intersections, with the following exceptions for properties which are served by Type A or B approaches:

(i) Mail boxes for Type A or B approaches on a four lane highway shall be located only on the side of the highway on which the approach is provided;

(ii) Mail boxes for Type A or B approaches on a two lane highway shall all be located on that side of the highway which is on the right in the direction of the mail delivery.

(3) **Modified control limited access highways:**

(a) Commercial approaches to modified controlled limited access highways may be permitted only where and in the manner specifically authorized at the time the plan is established and access rights are obtained.

(b) Bus stops and pedestrian crossings may be permitted as follows:

(i) In rural areas, bus stops and pedestrian crossings shall be subject to the same restrictions as on partial controlled limited access highways.

(ii) In urban areas bus stops for both commercial carriers and school buses may be permitted without restrictions other than those required by law.

(c) Mail boxes may be located adjacent to or opposite all authorized approaches as follows:

(i) Mail boxes on a four-lane highway shall be located only on the side of the highway on which the approach is provided.

(ii) Mail boxes on a two-lane highway shall all be located on that side of the highway which is on the right in the direction of the mail delivery.