Chapter 463-47 WAC
SEPA RULES

WAC

463-47-010 Authority.
463-47-020 Adoption by reference.
463-47-030 Purpose.
463-47-050 Designation of decisionmaker.
463-47-051 Designation of responsible official.
463-47-060 Additional timing considerations.
463-47-070 Threshold determination process—Additional considerations.
463-47-080 Mitigated DNS.
463-47-090 EIS preparation.
463-47-100 Public notice requirements.
463-47-110 Policies and procedures for conditioning or denying permits or other approvals.
463-47-120 Critical areas.
463-47-130 Threshold levels adopted by cities/counties.
463-47-140 Responsibilities of the council's responsible official.
463-47-150 Coordination on combined council—Federal action.
463-47-190 Severability.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

463-47-040 Additional definitions. [Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-040, filed 9/14/84.] Repealed by 04-21-013, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040 (1) and (12).

WAC 463-47-010 Authority. These rules are promulgated under RCW 43.21C.120 (the State Environmental Policy Act) and chapter 197-11 WAC (SEPA rules).

[Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-010, filed 9/14/84. Formerly chapter 463-46 WAC.]

WAC 463-47-020 Adoption by reference. The energy facility site evaluation council adopts the following sections or subsections of chapter 197-11 WAC by reference as of the effective date of this rule.

197-11-050 Lead agency.
197-11-055 Timing of the SEPA process.
197-11-060 Content of environmental review.
197-11-070 Limitations on actions during SEPA process.
197-11-080 Incomplete or unavailable information.
197-11-090 Supporting documents.
197-11-100 Information required of applicants.
197-11-300 Purpose of this part.
197-11-305 Categorical exemptions.
197-11-310 Threshold determination required.
197-11-315 Environmental checklist.
197-11-330 Threshold determination process.
197-11-335 Additional information.
197-11-340 Determination of nonsignificance (DNS).
197-11-350 Mitigated DNS.
197-11-360 Determination of significance (DS)/initiation of scoping.
197-11-390 Effect of threshold determination.
197-11-400 Purpose of EIS.
197-11-402 General requirements.
197-11-405 EIS types.
197-11-406 EIS timing.
197-11-408 Scoping.
197-11-410 Expanded scoping. (Optional)
197-11-420 EIS preparation.
197-11-425 Style and size.
197-11-430 Format.
197-11-435 Cover letter or memo.
197-11-440 EIS contents.
197-11-442 Contents of EIS on nonproject proposals.
197-11-443 EIS contents when prior nonproject EIS.
197-11-444 Elements of the environment.
197-11-448 Relationship of EIS to other considerations.
197-11-450 Cost-benefit analysis.
197-11-455 Issuance of DEIS.
197-11-460 Issuance of FEIS.
197-11-500 Purpose of this part.
197-11-502 Inviting comment.
197-11-504 Availability and cost of environmental documents.
197-11-508 SEPA register.
197-11-510 Public notice.
197-11-535 Public hearings and meetings.
197-11-545 Effect of no comment.
197-11-550 Specificity of comments.
197-11-560 FEIS response to comments.
197-11-570 Consulted agency costs to assist lead agency.
197-11-600 When to use existing environmental documents.
197-11-610 Use of NEPA documents.
197-11-620 Supplemental environmental impact statement—Procedures.
197-11-625 Addenda—Procedures.
197-11-630 Adoption—Procedures.
197-11-635 Incorporation by reference—Procedures.
197-11-640 Combining documents.
197-11-650 Purpose of this part.
197-11-655 Implementation.
197-11-660 Substantive authority and mitigation.
197-11-680 Appeals.
197-11-700 Definitions.
197-11-702 Act.
197-11-704 Action.
197-11-706 Addendum.
197-11-708 Adoption.
197-11-710 Affected tribe.
197-11-712 Affecting.
197-11-714 Agency.
197-11-716 Applicant.
197-11-718 Built environment.
197-11-720 Categorical exemption.

197-11-722 Consolidated appeal.
197-11-724 Consulted agency.
197-11-726 Cost-benefit analysis.
197-11-728 County/city.
197-11-730 Decisionmaker.
197-11-732 Department.
197-11-734 Determination of nonsignificance (DNS).
197-11-736 Determination of significance (DS).
197-11-738 EIS.
197-11-740 Environment.
197-11-742 Environmental checklist.
197-11-744 Environmental document.
197-11-746 Environmental review.
197-11-750 Expanded scoping.
197-11-752 Impacts.
197-11-754 Incorporation by reference.
197-11-756 Lands covered by water.
197-11-758 Lead agency.
197-11-760 License.
197-11-762 Local agency.
197-11-764 Major action.
197-11-766 Mitigated DNS.
197-11-768 Mitigation.
197-11-770 Natural environment.
197-11-772 NEPA.
197-11-774 Nonproject.
197-11-776 Phased review.
197-11-778 Preparation.
197-11-780 Private project.
197-11-782 Probable.
197-11-784 Proposal.
197-11-786 Reasonable alternative.
197-11-788 Responsible official.
197-11-790 SEPA.
197-11-792 Scope.
197-11-793 Scoping.
197-11-794 Significant.
197-11-796 State agency.
197-11-797 Threshold determination.
197-11-799 Underlying governmental action.
197-11-800 Categorical exemptions.
197-11-880 Emergencies.
197-11-890 Petitioning DOE to change exemptions.
197-11-900 Purpose of this part.
197-11-902 Agency SEPA policies.
197-11-904 Agency SEPA procedures.
197-11-906 Content and consistency of agency procedures.
197-11-910 Designation of responsible official.
197-11-912 Procedures on consulted agencies.
197-11-914 SEPA fees and costs.
197-11-916 Application to ongoing actions.
197-11-917 Relationship to chapter 197-10 WAC.
197-11-918 Lack of agency procedures.
197-11-920 Agencies with environmental expertise.
197-11-922 Lead agency rules.
197-11-924 Determining the lead agency.
197-11-926 Lead agency for governmental proposals.
197-11-928 Lead agency for public and private proposals.
197-11-930 Lead agency for private projects with one agency with jurisdiction.
197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
197-11-938 Lead agencies for specific proposals.
197-11-940 Transfer of lead agency status to a state agency.
197-11-942 Agreements on lead agency status.
197-11-944 Agreements on division of lead agency duties.
197-11-946 DOE resolution of lead agency disputes.
197-11-948 Assumption of lead agency status.
197-11-950 Severability.
197-11-955 Effective date.
197-11-960 Environmental checklist.
197-11-965 Adoption notice.
197-11-970 Determination of nonsignificance (DNS).
197-11-980 Determination of significance and scoping notice (DS).
197-11-985 Notice of assumption of lead agency status.
197-11-990 Notice of action.

[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-47-020, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1) and 43.21C.120. 98-01-082, § 463-47-020, filed 12/12/97, effective 1/12/98; 84-19-031 (Order 84-2), § 463-47-020, filed 9/14/84.]

WAC 463-47-030 Purpose. This chapter implements the statewide rules in chapter 197-11 WAC as they apply to the energy facility site evaluation council.

[Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-030, filed 9/14/84.]

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

[Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-050, filed 9/14/84.]

WAC 463-47-051 Designation of responsible official. Within the energy facility site evaluation council the responsible official is the council manager.

[Statutory Authority: RCW 80.50.040(1). 92-09-013, § 463-47-051, filed 4/2/92, effective 5/3/92; 84-19-031 (Order 84-2), § 463-47-051, filed 9/14/84.]

WAC 463-47-060 Additional timing considerations. (1) The council will determine when it receives an application whether the proposal is an "action" and, if so, whether it is "categorically exempt" from SEPA. If the proposal is an action and is not exempt, the council will request the applicant to complete an environmental checklist. A checklist is not needed if the council and applicant agree an EIS is required, SEPA compliance has been completed, SEPA compliance has been initiated by another agency, or a checklist is included with the application. The applicant should also com-

plete an environmental checklist if the council is unsure whether the proposal is exempt.

(2) The council may initiate an adjudicative proceeding required by RCW 80.50.090 prior to completion of the draft EIS.

[Statutory Authority: RCW 80.50.040(1). 07-21-035, § 463-47-060, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-47-060, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040. 91-03-090, § 463-47-060, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-060, filed 9/14/84.]

WAC 463-47-070 Threshold determination process—Additional considerations. When reviewing a completed environmental checklist to make the threshold determination, the council will:

(1) Independently evaluate the responses of the applicant and note comments, concerns, corrections, or new information in the right margin of the checklist.

(2) Conduct the initial review of the checklist and any supporting documents without requiring additional information from the applicant.

[Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-070, 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 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(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 WAC 197-11-350(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.

[Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-080, filed 9/14/84.]

WAC 463-47-090 EIS preparation. (1) Preparation of draft and final 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 RCW—Public disclosure and public records law).

[Statutory Authority: RCW 80.50.040(1). 07-21-035, § 463-47-090, filed 10/9/07, effective 11/9/07. Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-47-090, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). 92-09-013, § 463-47-090, filed 4/2/92, effective 5/3/92; 84-19-031 (Order 84-2), § 463-47-090, 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), a scoping notice under WAC 173-802-090, 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.

[Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-100, filed 9/14/84.]

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.

[Statutory Authority: RCW 80.50.040(1). 07-21-035, § 463-47-110, filed 10/9/07, effective 11/9/07; 84-19-031 (Order 84-2), § 463-47-110, filed 9/14/84.]

WAC 463-47-120 Critical areas. In determining whether a proposal is exempt from SEPA, the council shall consider "critical area" designations made by local governments under WAC 197-11-908.

[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-47-120, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1) and 43.21C.120. 98-01-082, § 463-47-120, filed 12/12/97, effective 1/12/98. Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-120, filed 9/14/84.]

WAC 463-47-130 Threshold levels adopted by cities/counties. In determining whether a proposal is exempt from SEPA, the council shall consider the threshold levels adopted by cities/counties under WAC 197-11-800(1).

[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-47-130, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-130, filed 9/14/84.]

WAC 463-47-140 Responsibilities of the council's responsible official. The EFSEC manager 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.

[Statutory Authority: RCW 80.50.040(1). 07-21-035, § 463-47-140, filed 10/9/07, effective 11/9/07; 84-19-031 (Order 84-2), § 463-47-140, filed 9/14/84.]

WAC 463-47-150 Coordination on combined council—Federal action. When the council is considering an action which also involves federal actions, it shall attempt to coordinate the two governmental processes so that only one environmental impact statement need be prepared for that proposal.

[Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-150, filed 9/14/84.]

WAC 463-47-190 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

[Statutory Authority: RCW 80.50.040(1). 84-19-031 (Order 84-2), § 463-47-190, filed 9/14/84.]