

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

**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 (~~local~~) land use plans (~~or~~), zoning ordinances, or other development regulations for a site or portions of a site for an energy facility, or alternative energy facility.

[Statutory Authority: RCW 80.50.040 (1) and (12). 04-21-013, § 463-28-010, filed 10/11/04, effective 11/11/04. Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-010, filed 6/23/78.]

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

**WAC 463-28-060** (~~(Request for preemption)~~) **Adjudicative proceeding.** (1) Should ~~((an applicant elect to continue processing the application and file a request with the council for state preemption,))~~ the council determine under WAC 463-26-110 a site or any portions of a site is inconsistent it will schedule an adjudicative proceeding ~~((hearing on the application as specified))~~ 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).

(3) The council shall determine ~~((during the adjudicative proceeding))~~ whether to recommend to the governor that the state ~~((should))~~ preempt the ~~((local))~~ land use plans ~~((or)),~~ zoning ordinances, or other development regulations for a site or portions of a site for the energy facility or alternative energy resource proposed by the applicant. ~~((The factors to be evidenced under this issue are those set forth in WAC 463-28-040. The determination of preemption shall be by council order, and shall be included in its recommendation to the governor pursuant to RCW 80.50.100.))~~

filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1). 83-08-031 (Order 83-2), § 463-28-060, filed 3/31/83; 78-07-036 (Order 78-3), § 463-28-060, filed 6/23/78.]

AMENDATORY SECTION (Amending Order 78-3, filed 6/23/78)

**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 (~~(give due consideration to)~~) consider state or local governmental or community interests affected by the construction or operation of the energy facility or alternative energy resource and the purposes of laws or ordinances, or rules or regulations promulgated thereunder that are preempted (~~or superseded~~) pursuant to RCW 80.50.110(2).

[Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-070, filed 6/23/78.]

AMENDATORY SECTION (Amending WSR 91-03-090, filed 1/18/91, effective 2/18/91)

**WAC 463-28-080 Preemption--(~~Failure to justify~~)**  
**Recommendation.** (~~(During the adjudicative proceeding, if the council determines that the applicant has failed to justify the request for state preemption, the council shall do so by issuance of an order accompanied by findings of fact and conclusions of law. Concurrent with the issuance of its order, the council shall report to the governor its recommendation for rejection of certification of the energy facility proposed by the applicant.)~~) The council's determination on a request for preemption shall be part of its recommendation to the governor pursuant to RCW 80.50.100.

[Statutory Authority: RCW 80.50.040. 91-03-090, § 463-28-080, filed 1/18/91, effective 2/18/91. Statutory Authority: RCW 80.50.040(1). 78-07-036 (Order 78-3), § 463-28-080, filed 6/23/78.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 463-28-030	Determination of noncompliance-- Procedures.
WAC 463-28-040	Inability to resolve noncompliance.
WAC 463-28-050	Failure to request preemption.