



State of Washington

Energy Facility Site Evaluation Council

CONCISE EXPLANATORY STATEMENT

Notice of Permanent Rule Changes to Title 463 WAC

This explanatory statement concerns the Energy Facility Site Evaluation Council's amendments to the following chapters of Title 463 WAC:

- Chapter 463-06 Agency operations and public records.
- Chapter 463-10 Definitions.
- Chapter 463-14 Policy and interpretation.
- Chapter 463-18 Council meetings and proceedings.
- Chapter 463-22 Potential site studies.
- Chapter 463-26 Informational public meeting and land use hearing.
- Chapter 463-28 State preemption.
- Chapter 463-30 Adjudicative proceedings.
- Chapter 463-34 Petitions for rule making and declaratory orders.
- Chapter 463-43 Expedited processing.
- Chapter 463-47 SEPA rules.
- Chapter 463-58 Charges for independent consultant study, regular and expedited application processing, electrical transmission preapplications, determining compliance and potential site study.
- Chapter 463-60 Applications for site certification.
- Chapter 463-61 Electrical transmission facilities.
- Chapter 463-62 Construction and operation standards for energy facilities.
- Chapter 463-64 Issuance of a site certification agreement.
- Chapter 463-68 Site certification agreement—Start of construction, expiration, and reporting.
- Chapter 463-70 Certification compliance monitoring and enforcement.
- Chapter 463-72 Site restoration and preservation.
- Chapter 463-74 Dangerous wastes.
- Chapter 463-76 Regulations for compliance with NPDES permit program.
- Chapter 463-78 General and operating permit regulations for air pollution sources.
- Chapter 463-80 Carbon dioxide mitigation program for thermal electric generating facilities.

- Chapter 463-85 Greenhouse gases emissions performance standard and sequestration plans and programs for baseload electric generating facilities.

The Administrative Procedure Act [[RCW 34.05.325\(6\)](#)] requires agencies to complete a concise explanatory statement before filing amended rules with the Office of the Code Reviser. This statement must be sent to anyone who provided comments about the proposed rulemaking.

Once persons who gave comment during this rule-making process have had an opportunity to receive this document, the Energy Facility Site Evaluation Council (EFSEC) will file the amended rules with the Office of the Code Reviser with an effective date of **June 23, 2025**.

EFSEC appreciates the public involvement in the rule-making process. If there are any questions, please contact the EFSEC Rules Coordinator at RuleMaking@efsec.wa.gov or at (360) 515-2011.

What are the agency’s reasons for adopting these rule changes?

These rule changes introduce **non-substantive amendments only**.

EFSEC became an independent agency on June 30, 2022, when the Act modernizing the energy facility site evaluation council to meet the state’s clean energy goals (E2SHB 1812) went into effect.

The 2022 law made changes to Chapter 80.50 RCW (the Energy Facility—Site Location Act), necessitating updates to a number of references in the EFSEC WAC (Title 463) to align provisions and terms with the revised law.

Examples include: (1) the position of “director” was created to lead staff and replaced the term “council manager”; and, (2) a new paragraph was inserted into RCW 80.50.090 Public hearings—Opportunity for public comment, such that details on holding “a public hearing, conducted as an adjudicative proceeding under chapter 34.05 RCW” was changed from being subsection 3 to being subsection 4.

Similarly, when the Environmental Health Law Reorganization Act (SHB 2246) went into effect in 2020, many legal references in the EFSEC WAC (Title 463) needed to be updated to reflect references to the law as revised.

Additionally, a number of the chapters within Title 463 WAC had not been updated in many years to reflect the agency’s correct address and contact information; the changes and updates to the Public Records Act (Chapter 42.56 RCW) since 2004; updates to the current technological practices (e.g., introducing email and website to communication processes); or, updates to the Office of the Code Reviser’s style guide.

All proposed changes either:

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

The Rule Development Process

On July 23, 2024, EFSEC filed a notice of expedited rule making (CR-105) with the Code Reviser's Office and announced the action with an email blast to EFSEC's general mailing list on August 5, 2024, and with publication in the Washington State Register as [WSR 24-15-134](#) on August 7, 2024. A public comment period was opened from August 5 through September 24, 2024, on the proposed rule changes with the intention of adopting them on an expedited basis if no objection were received. Comments were welcome via email, through a webform on the Council's website, by phone, and by mail.

On August 13, 2024, EFSEC received an objection from a Ferry County commissioner objecting to the expedited rulemaking process. Staff contacted the commissioner to explain the housekeeping nature of the proposed changes by citing specific examples of the changes proposed. After discussion, the commissioner agreed to withdraw his objection, which he confirmed by email on August 21, 2024.

On September 12, 2024, EFSEC received an objection from the Benton County Board of Commissioners. The County objection was not to any substance in the proposed rule changes, but rather was motivated by an interest "to ensure that public's input is fully included in the process prior to adoption of any amendments." Staff again contacted the county commission, but after some discussion and explanation the board of commissioners declined to withdraw its objection believing it important for EFSEC to hold a public hearing.

Given the objection, EFSEC turned the notice of proposed expedited rule making into a prenotice inquiry as dictated by [RCW 34.05.353\(8\)](#) and filed [WSR 24-20-147](#) as a notice of proposed rule making (CR-102) per [RCW 34.05.320](#) on October 2, 2024. Published in the Washington State Register on October 16, 2024, the notice (WSR 24-20-147) announced a public hearing for November 7, 2024, and welcomed public comments again via email, through a webform on the Council's website, by phone, and by mail. Interested members of the public who have signed up to EFSEC's general mailing list were informed of this filing, the planned hearing, and the reopening of the public comment period until 5:00pm on November 7, 2024, through an email notices sent in English and Spanish on October 16, 2024.

EFSEC convened the public hearing on November 7, 2024, and received one public comment at the hearing. By 5:00pm on November 7, 2024, EFSEC had received five written

comments from the public. Thus concluded a three-month process of seeking public comment on the agency's rule amendments.

Summary of all public comments received on this rule proposal and EFSEC's response.

The one oral comment and five written comments that EFSEC received as part of this three-month process of soliciting public input, for the most part, related to objections to pursuing rule changes through expedited rulemaking, which was perceived as not sufficiently seeking meaningful public input.

One commentator also believed, without specifying any proposed rule change, that the public records process was being changed to make transparency more difficult; and another comment opposed any rule changes that would reduce public participation in EFSEC's application process.

EFSEC RESPONSE: As per the provisions in the Administrative Procedures Act ([Chapter 34.05 RCW](#)), EFSEC originally tried to adopt these basic housekeeping changes to the rules using an expedited process allowed by the APA, lasting 45 days from publication in the Washington State Register. Once EFSEC received an objection to the expedited process, it returned to adoption of the rules via the normal process provided in the APA. The public had a full three months to review and comment on the rule changes, which were posted on its website from August 5 until November 7, 2024. The public was also informed twice through email and through publications in the Washington State Register of the proposed rules changes beginning on August 5, 2024. As a result, the public had 95 days to review and submit their comments. The public also had the opportunity to attend the public hearing held on November 7, 2024.

The only changes made to the public records process were updates to the EFSEC rules to bring them into conformity with the requirements of the current Public Records Act (RCW 42.56). No changes to any of the EFSEC rules were proposed that would reduce the ability of the public to participate in the EFSEC application process.

Reasons for any variances from the proposed rule and final adopted rule [RCW 34.05.325(6)(a)(ii)].

There are no variances from the proposed rules and the final adopted rules.