

**WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL**

Revision of WAC 463-78, Regulations for Air Pollution Sources

**Concise Explanatory Statement
Required by RCW 34.05.325**

February 23, 2006

1. Summary of public notification and participation.

Notice of the proposed rulemaking (CR102) was mailed to EFSEC's Minutes and Agendas, and Rulemaking lists on December 23, 2005, and e-mailed to the same lists on December 22, 2005. The CR102 form included notice of a public hearing to be held on February 14, 2006, starting at 1:30 p.m., at the EFSEC offices, 925 Plum Street S.E., Building 4, Conference Room 308, Olympia, Washington 98504. The deadline for submittal of public comments was the end of business, February 7, 2006.

Notice of the proposed rulemaking was published in the Washington State Register, WSR 06-01-014, on January 14, 2006. Notice of the proposed rulemaking, and the February 14, 2006 comment meeting was also posted to EFSEC's website on December 22, 2006. Notice of the February 14, 2006 public comment meeting was also included on the agenda for the Council's meeting scheduled for February 14, 2006. The agenda was mailed and e-mailed to EFSEC's Minutes and Agendas list.

A public hearing on the proposed rulemaking was held on February 14, 2005, starting at 1:30 p.m., at the EFSEC offices, 925 Plum Street S.E., Building 4, Conference Room 308, Olympia, Washington 98504. No oral comments were received at the hearing.

Two comments were received in writing:

- 1) Roylene Cunningham, Environmental Protection Agency Region 10, dated January 9, 2006;
- 2) David Bricklin, representing the Province of British Columbia, dated February 7, 2006.

2. Identification of EFSEC's reasons for adopting the rule.

Adoption of the rule is required for EFSEC to maintain a permit program for air pollution sources that is consistent with current state and federal requirements. Chapter 463-78 WAC, General and Operating Permit Regulations for Air Pollution Sources, implements the standards and procedural requirements for review and issuance of air emission permits for facilities under EFSEC jurisdiction. EFSEC is delegated by the U.S. Environmental Protection Agency to issue certain federal permits and EFSEC is authorized by state statute to issue state permits for air pollution sources regulated under chapter 80.50 RCW. To ensure standardization and

consistency with state and federal requirements chapter 463-78 WAC adopts the updated regulations by reference, thereby implementing currently applicable state and federal laws and rules regarding air emissions control.

Since EFSEC’s 2004 amendments to WAC 463- 78-115 and WAC 463-78-005, both state and federal rules for air pollution sources have been updated and/or revised. In additions some sections of chapters 173-400 WAC, 173-401 WAC, 173-406 WAC and 173-460 WAC have been amended by Ecology as of February 2005. Because of these changes EFSEC has determined that adoption by reference of the proposed changes to its rules is needed and is the most appropriate means to implement recent state and federal regulation updates and changes.

Adoption of the rule revisions considered here will update chapter 463-78 WAC to be consistent with Ecology’s requirements for New Source Review (NSR), Prevention of Significant Deterioration (PSD), Air Operating permit (AOP), and Acid Rain permit programs, as well as federal New Source Performance Standards (NSPS).

The following changes to chapter 463-78 WAC are also being made:

- WAC 463-78-030: defines terms used in EFSEC’s rules consistent with current ecology rules;
- WAC 463-78-100: clarifies registration requirements for sources by describing emissions thresholds for registration, information required to be submitted and deadlines for submittal;
- WAC 463-78-115: adopts most recent federal NSPS standards;
- WAC 463-78-140: clarifies permit appeal procedures to be consistent with EFSEC’s statute.

3. Differences between the text of the proposed rule as published in the register and the text of the rule as adopted.

The following table shows the changes made to the proposed rules between proposal and adoption stages.

Rules as proposed (CR 102)	Rules as Adopted (CR 103)
WAC 463-78-005 Adoption by reference.	No changes to proposed text.
WAC 463-78-030 Additional definitions.	No changes to proposed text.
WAC 463-78-100 Registration.	No changes to proposed text.
WAC 463-78-115 Standards of performance for new stationary sources.	No changes to proposed text.
WAC 463-78-140 Appeals procedure. <u>(1) Appeal of Permits issued pursuant to WAC 173-400-110.</u> <u>(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</u>	<u>(1) Appeal of Permits issued pursuant to WAC 173-400-110.</u> <u>(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</u>

Rules as proposed (CR 102)	Rules as Adopted (CR 103)
<p><u>34.05 RCW; provided that any order, permit, conditions or denial issued pursuant to WAC 173-400-110 which becomes effective upon action of the governor shall be subject to judicial review only pursuant to RCW 80.50.140.</u></p> <p><u>(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.</u></p> <p><u>(2) Appeal of prevention of significant deterioration permits issued pursuant to WAC 173-400-730.</u></p> <p><u>(a) A PSD permit, any conditions contained in a PSD permit, or the denial of 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 PSD permit which becomes effective upon action of the governor 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.</u></p> <p><u>(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 CFR 124.13 and 40 CFR 124.19.</u></p> <p><u>(3) Appeal of operating permits issued pursuant to WAC 173-401.</u></p> <p><u>(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 WAC 173-401, 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 WAC 173-401 which becomes effective upon action of the governor, shall be subject to</u></p>	<p><u>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.</u></p> <p>(b) – No changes to proposed text.</p> <p><u>(2) Appeal of prevention of significant deterioration permits issued pursuant to WAC 173-400-730.</u></p> <p><u>(a) A PSD permit, any conditions contained in a PSD permit, or the denial of 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 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.</u></p> <p>(b) – No changes to proposed text.</p> <p><u>(3) Appeal of operating permits issued pursuant to WAC 173-401.</u></p> <p><u>(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 WAC 173-401, 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 WAC 173-401 which becomes effective upon final action of the governor according to</u></p>

Rules as proposed (CR 102)	Rules as Adopted (CR 103)
<p><u>judicial review only pursuant to RCW 80.50.140.</u></p> <p><u>(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.</u></p> <p><u>(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 CFR 70.8(c) and 70.8(d).</u></p> <p><u>(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.</u></p> <p><u>(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.</u></p>	<p><u>RCW 80.50.100 on an application for site certification, shall be subject to judicial review only pursuant to RCW 80.50.140.</u></p> <p>(b) (c) (d) (e) – No changes to proposed text.</p>
<p><u>(4) Appeal of acid rain permits issued pursuant to WAC 173-406.</u></p> <p><u>(a) Terms used in this subsection have the definitions given in WAC 173-406-101.</u></p> <p><u>(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 CFR part 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 action of the governor shall be subject to judicial review only pursuant to RCW 80.50.140.</u></p> <p><u>(c) Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall</u></p>	<p><u>(4) Appeal of acid rain permits issued pursuant to WAC 173-406.</u></p> <p>(a) – No changes to proposed text.</p> <p><u>(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 CFR part 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.</u></p>

Rules as proposed (CR 102)	Rules as Adopted (CR 103)
<p><u>follow the procedures under 40 CFR 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.</u></p> <p><u>(d) No administrative appeal or judicial appeal of the acid rain portion of an operating permit shall be allowed more than thirty 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.</u></p> <p><u>(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.</u></p> <p><u>(f) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:</u></p> <p style="padding-left: 40px;"><u>(i) The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;</u></p> <p style="padding-left: 40px;"><u>(ii) Any standard requirement under WAC 173-406-106;</u></p> <p style="padding-left: 40px;"><u>(iii) The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 CFR part 75;</u></p> <p style="padding-left: 40px;"><u>(iv) Uncontested provisions of the decision on appeal; and</u></p> <p style="padding-left: 40px;"><u>(v) The terms of a certificate of representation submitted by a designated representative under subpart B of 40 CFR part 72.</u></p> <p><u>(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 days of the filing of the appeal.</u></p> <p><u>(h) The council will serve written notice on the administrator of any</u></p>	<p>(c) (d) (e) (f) (g) (h) – No changes to proposed text.</p>

Rules as proposed (CR 102)	Rules as Adopted (CR 103)
<p><u>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.</u></p> <p>(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-((54))<u>70-070</u> (4)(c).</p>	<p>(5) No changes to proposed text.</p>

4. Summary of, and response to, all comments received regarding the proposed rule.

- 4.1. Roylene Cunningham, U.S. Environmental Protection Agency, Region 10 (US EPA), stated that EPA had no further comments, but re-iterated EPA’s “General Comments” on a previous draft of the proposed revisions to chapter 463-78 WAC (submitted to EFSEC on July 22, 2005).

Several comments were about procedural aspects of submittal of the rules into the State Implementation Plan. Two comments addressed language of the preliminary draft, and have already been addressed in the proposed rule language issued for comment in the CR 102 as follows:

7-22-2005 Comment on the preliminary draft rule Roylene Cunningham, US EPA Region 10¹	Changes made to rules prior to issuance for comment in CR 102.
WAC 463-78-140(2): The provision for appeal of general permits is not needed because the provisions authorizing EFSEC to issue general permits have been removed from the rule.	The language concerning appeal of a general permit has been removed.
WAC 173-76-140(3): Note that appealing under state law a PSD permit or any condition in a PSD permit does not stay the effective date of the permit as a matter of federal law (which does occur if the PSD permit is appealed to the EAB as provided in 40 CFR 124.13 and 124.19). We suggest that clarifying language be added to subparagraph (a): "Such an appeal, however, does not stay the effective date of the permit as a matter of federal law."	The requested language has been added to WAC 463-78-140(2)(a).

¹ US EPA’s review was for consistency with federal regulation in the event that EFSEC makes a request to submit the revisions into the State Implementation Plan.

Response:

Thank you for your comment. As shown above, the “General Comments” were considered in preparation of this rule revision issued for public comment, and will continue to be considered when EFSEC submits the final adopted version of chapter 463-78 WAC to EPA for inclusion in the State Implementation Plan.

4.2. David Bricklin, Province of British Columbia

Comment: 463-78-005 and adoption of WAC 173-400-730

WAC 173-400-730 provides application processing procedures for PSD permit applications. Subsection (5) addresses time limitations on construction approvals. This appears to be a formal iteration of procedures that were already relied on by EFSEC for PSD permitting. 40 CFR 52.21(r)(2).

This section should include additional language to reflect time limitations for submitting a PSD extension application. As the Province raised in a prior comment letter, EPA guidance establishes that a permit extension application should be requested six months prior to the expiration of the PSD permit. EPA Guidelines (June 1991) at 7-12. Including this six month requirement in the EFSEC rule language would eliminate ambiguity regarding the timing for submitting an extension application. This ambiguity has been grounds for comments and appeals to the Environmental Appeals Board in the past, and clarification of specific time limitations for applicants would obviate the need to rely on unadopted federal guidance.

The Province further requests that EFSEC include language in its new rule that articulates specific substantive requirements for extension requests. For example, EFSEC should include language requiring an extension request to “include a revised construction schedule which assures that construction will be initiated during the extension period . . .”. EPA Region 9 Policy on PSD Permit Extensions (Sep. 8, 1988). Incorporating the guidance language into the new rule will clarify the applicant’s substantive requirements and minimize confusion for all interested parties.

Response:

Thank you for your comment. First it should be noted that EFSEC does not have the authority to amend Ecology’s WAC 173-400-730. EFSEC can choose to adopt Ecology’s rule in whole or in part. EFSEC can incorporate additional requirements into chapter 463-78 WAC. In the spirit of keeping permitting requirements clear for EFSEC’s applicants, certificate holders and the public, EFSEC has generally chosen to adopt entire sections by reference. If for any reason a section in Ecology’s rules does not meet EFSEC’s regulatory requirements, EFSEC prefers to write a discrete section in chapter 463-78 WAC that addresses EFSEC’s specific requirements.

The 1991 guidance referred to by the commentor was draft guidance that was never adopted by US EPA for the processing of PSD extension permits², Only the 1988 guidance has been adopted by US EPA Region 9. EFSEC has relied on the 1988 guidance for processing PSD permit extensions. The 1988 guidance does not suggest that a request be submitted 6 months prior to expiration of the permit, but does reflect the language used in WAC 173-400-730(5) (b) (i) (A): “A written request for the extension, submitted by the PSD permit holder, as soon as possible prior to the expiration of the current PSD permit.”. Adding a requirement to submit the request 6 months prior to expiration is therefore not supported by any guidance or regulation being used by EFSEC in PSD permit extension processes.

The commentor also requests that EFSEC include language requiring an extension request to “include a revised construction schedule which assures that construction will be initiated during the extension period . . .” EFSEC declines to do so at this time, but will consider this change for future rulemaking. As explained above, EFSEC wishes to retain clarity in its rule requirements, and prefers not to have requirements regarding the same matter in separate sections, as language included directly in WAC 463-78, and as a section adopted by reference from WAC 173-400. EFSEC believes that it is important to maintain consistency within all state permitting and will therefore adopt 173-400-730 WAC with the exception of 173-400-730 (4) as noted in WAC 463-78-005. Furthermore, EFSEC will continue to rely on applicable EPA guidance when EFSEC conducts PSD permitting activities.

Comment: 463-78-005 and adoption of WAC 173-400-740

WAC 173-400-740 explains public involvement requirements, ensuring that EFSEC provides public notice before approving or denying any preliminary determination for a PSD permit, or providing an extension or revision of a PSD permit. The Province asks that EFSEC include language that makes these requirements specifically applicable to the Province. For example, in 740(c)(vi) change the clause: “Any state within 100 km of the proposed project” to read “Any state or Province within 100km.”

Response:

EFSEC has adopted by reference the public notification requirements specifically meant to address the public involvement requirements of the *federal PSD Program*. The requirement stems from 40 CFR 124.10 (c) (1) (vii), requiring “affected states” to be notified. 40 CFR 124.2 defines “state” and does not include Canadian provinces. It is therefore not appropriate to make the requested changes, as they would not reflect the requirements of the federal PSD program for which EFSEC has been delegated authority.

In the spirit of cooperation with the Province, EFSEC will continue to notify the Province of British Columbia of projects within 100 km of its border, as agreed to in the Interagency Agreement Among the State of Washington Department of Ecology, the State of Washington

² Mr. Bricklin refers to a draft guidance document dated June 1991. EFSEC has stated on the record (in appeal proceedings before the US EPA Environmental Appeals Board), that this guidance has not been formally adopted by EPA for use in PSD permitting processes, and is therefore not being relied upon by EFSEC in extension review processes.

Northwest Air Pollution Authority, and, the Province of British Columbia, Ministry of Environment, Lands and Parks, and the Greater Vancouver Regional District³. EFSEC will also continue to assist the US EPA Region 10 in completing any federal notification obligations under the Agreement Between the Government of the United States of America and the Government of Canada on Air Quality⁴.

Comment: 463-78-100

This new section clarifies and expands on the registration program used by EFSEC to keep track of pollution sources under Chapter 80.50 RCW. The regulation's purpose specifies that the program will create a "current and accurate record of air contaminant sources subject to 80.50 RCW" and enable EFSEC and Ecology to "evaluate the effectiveness" of air pollution regulation.

The proposed language for the registration program gives new operators 90 days after beginning operation to register. Instead, this information should be provided to EFSEC prior to the start of operation or on the initial operation date. The information requested for initial registration is either available prior to the start of operation, or can be estimated at that time. An early reporting requirement would enable EFSEC to maintain records of projected versus actual emissions for operations subject to 80.50 RCW. This would better serve the purposes of the program and facilitate effective and informed air pollution regulation.

The language of this rule should also be clarified to reflect that this reporting information will be made publicly available through WAC 173-400-175.

Response:

As proposed, the timing of submittal of initial registration exceeds other registration requirements for sources in the state (Ecology's WAC 173-400 has no submittal deadline for initial registration). Most of the information in the registration is already known to EFSEC through the New Source Review and PSD review processes. The 90 day timeline will not hamper EFSEC's ability to maintain records of projected versus actual emissions for operations subject to 80.50 RCW. EFSEC declines to change the deadline in the adopted rule.

Adding language to clarify that registration information is publicly available is redundant. Not only has EFSEC adopted Ecology's WAC 173-400-175 by reference, but EFSEC is already bound to follow the Washington State Public Records Act, chapter 42.17 RCW. Unless a record is specifically protected under chapter 42.17 RCW or under the federal Clean Air Act, it is available to any person upon request provided the correct records request procedures are followed.

³ <http://www.env.gov.bc.ca/spd/ecc/documents/mouair.pdf>

⁴ <http://www.epa.gov/airmarkets/usca/agreement.html>

Comments on WAC 463-78-140

This section clarifies permit appeal procedures by consolidating and re-writing various appeal requirements. The proposed rule increases clarity by separating appeal provisions for each type of permit. However, the proper procedures within each subsection need additional clarification.

The proposed rule for an appeal of permits issued pursuant to WAC 173-400-110 indicates that some appeals should be brought under RCW 80.50.140, while others should utilize the Administrative Procedures Act (APA), Chapter 34.05 RCW. This rule would benefit by language clarifying which types of EFSEC actions would be subject to APA appeals, and which would trigger RCW 80.50.140 procedures. Under WAC 463-78-095, all new energy facilities require governor approval, which would require appeals under RCW 80.50.140. However, extensions of PSD/NOC permits, NPDES permits, and certain permit amendments do not involve the Governor. Presumably, these would trigger Chapter 34.05 RCW, but the scope of APA application is unclear. Including this information within the rule would make it more helpful in guiding appeal procedures.

Similarly, the appeals process for PSD permits issued pursuant to WAC 173-400-730 employ procedures in either 34.05 RCW or RCW 80.50.140 depending on whether the Governor has acted to approve the permit. As with NOC appeals, the proposed language would benefit from clarification as to what types of actions do not require Governor approval, thereby triggering the application of Chapter 80.50 RCW.

The same logic applies to the proposed language for appeals of operation permits issued pursuant to Chapter 173-401 WAC. The language should clarify what permitting specifically triggers Chapter 34.05 RCW or RCW 80.50.140 as the proper vehicle for bringing an appeal.

Response:

Thank you for your comment. The language in all four subsections has been clarified to indicate that permits associated with final decisions by the Governor pursuant to RCW 80.50.100 *on applications for certification* are appealable according to the requirements of RCW 80.50.140. By exclusion, all other permit decisions are appealable under the administrative procedures act chapter 34.05 RCW. Further listing of the types of permit actions may lead to additional confusion as EFSEC can not anticipate all types of permit actions that can be brought before it.

Additional Note:

During the Council's consideration of this proposed rule⁵ Councilmembers questioned EFSEC staff and EFSEC's assistant attorney general why the appeal of a permit that becomes effective pursuant to the governors final action on an application for site certification be incorporated into the appeal procedure for the site certification agreement as a whole (see RCW 80.50.140), and whether other EFSEC rules already addressed this procedural issue.

⁵ February 14, 2006 Monthly Council Meeting.

Although EFSEC rules regarding the issuance of NPDES permits address NPDES permit appeals, there are no rules that specifically address how a site certification agreement is appealed pursuant to RCW 80.50.140 and how permits attached to an SCA are appealed when a governor certifies a new application.

Air emission permits issued by other jurisdictions in Washington state are first appealed to the Pollution Control Hearings Board (PCHB). However, the PCHB does not have the authority to hear EFSEC permit appeals⁶. Therefore the only remaining route for appeal is the Administrative Procedure Act, chapter 34.05 RCW. Final decisions by the governor on an application for site certification are also reviewed per chapter 34.05 RCW, with the additional conditions of RCW 80.50.140.

The proposed revision to WAC 463-78-140 requiring the appeal of a permit for a new certificate according to RCW 80.50.140 is supported for the following reasons:

- 1) RCW 80.50 140 (1) anticipates that all petitions for review of a decision under RCW 80.50 100 be consolidated into a single proceeding. As an attachment to the Site Certification Agreement, permits are integral to the Governor's final action.
- 2) RCW 80.50. 140 (1) (d) anticipates that the review of an application be expedited "in every way possible" by the Supreme Court – having an attached permit appealed to a separate court would not expedite the appeal process.
- 3) Finally, the record for appeal of an air emissions permit would likely incorporate significant portions of the record established for the Council's recommendation to the Governor, and the Governor's decision on the application for site certification.

Comment: Further Rule Amendments

Ecology has indicated that it will soon be initiating additional amendments to some of the rules which EFSEC is currently adopting by reference. The Province would encourage EFSEC to communicate with Ecology to identify the areas that Ecology intends to change and include these changes in its current rule making. EFSEC should attempt to avoid the wholesale adoption of rules that may soon no longer be current or accurate.

Response:

EFSEC staff actively participates in Ecology rulemaking stakeholder groups in anticipation of new rules being adopted by Ecology. EFSEC makes all attempts to update its adoption of Ecology rules in a timely manner. Current rulemaking initiated by Ecology may take many months prior to new rules being adopted. EFSEC prefers to finalize the adoption of the proposed rules considered here to ensure that its program requirements are up to date as soon as possible. EFSEC will re-initiate the updating process when Ecology's new rules are close to the final adoption stage.

⁶ See RCW 43.21B.001, and 110.

5. Availability of the Concise Explanatory Statement

The concise explanatory statement is available to interested persons upon request made to EFSEC, P.O. Box 43172, Olympia, Washington, 98504-3172, by calling (360) 956-2121, or by e-mail to efsec@cted.wa.gov. The statement will also be posted to EFSEC's website at www.efsec.wa.gov, and mailed to those persons and organizations that made comment.