



Oregon

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Date: **November 21, 2014**

To: **EFSC members**

From: **Jason Sierman, Policy Analyst**
Todd Cornett, Siting Division Administrator

Subject: **Rulemaking Options for OAR 345 at Division 27 rules regarding EFSC Site Certificate Amendments (Including Potential Actions)**

Background:

At the June 21, 2013 meeting, Council authorized staff to initiate rulemaking to amend the rules for EFSC site certificate amendments and approved staff's request to appoint a Rulemaking Advisory Committee (RAC). The RAC represented a balanced cross-section of interest groups including the public, public utilities, merchant facilities, NGOs, local reviewing agencies, and state reviewing agencies.

The rule development began with staff further developing rule concepts that emerged from pre-rulemaking workshops. In April 2014, staff began meeting with the RAC and presented them with several variations of rule concepts to promote discussion, inspire new ideas, and elicit RAC input. Staff held 3 RAC meetings, most recently on October 16, 2014. The meetings were iterative in nature and had robust stakeholder input. Staff considered the input from each individual RAC member, designed new rule concepts or refined prior rule concepts, and then presented those concepts back to the RAC at the next meeting. As a result of the RAC meetings, staff learned a great deal about how the amendment process affects EFSC stakeholders and staff identified many issues with proposed rule concepts. However, even after the significant amount of time, effort, and input provided by RAC members and staff, the exact details of how the site certificate amendment process should be revised remain differed among stakeholders.

Next Steps:

- Staff drafts proposed rule language.
- Proposed rule language goes to the RAC to inform their fiscal impact analysis.
- Proposed rule language goes through DOJ review and approval.
- Council may also choose to review and approve the proposed rule language and fiscal impact analysis.
- After DOJ (and Council) approval of the proposed rule language, staff will give legal notice and file the proposed rule language with the Secretary of State.
- Next, a public comment period and a public hearing will take place.
 - Public Hearing may be conducted in the presence of Council.
- After staff considers all the public comments and the hearings officer's report, staff may make minor changes to the proposed rule language.
- Finally, staff presents final proposed rule language to the Council with a recommendation asking for Council's approval to file final permanent rules with the Secretary of State.

- Council may make minor changes to the rule language before filing the final permanent rule.
- However, any major changes to the rule language at this point in the process would trigger a new round of the public notice process.
- Contingent upon the Council directing Staff to continue with Division 27 rulemaking by drafting proposed rule language for the concepts it is presenting today, and contingent upon the timing of Council meetings in 2015, Staff anticipates presenting permanent Division 27 rule language to the Council for final approval in May 2015.

Rulemaking Options for Council:

November 21, Council Meeting:

- Council decides not to move forward with amending the Div. 27 rules. **(Potential Action Today)**
- Council advises staff to make “clean-up changes” only. Staff drafts new rules that clarify the existing rules, but does not make any procedural changes to the effect and function of the existing rules. **(Information)**
- Council re-authorizes rulemaking because of the extended length of time that has elapsed since the rulemaking process was initiated. **(Potential Action Today)**
 - Re-authorization could occur today or at the next EFSC meeting.
 - Re-authorization is optional, and is not legally required.

First EFSC Meeting of 2015:

- No re-authorization, but an update to Council prior to filing notice of rulemaking with the Secretary of State. **(Information)**
- Re-authorization and an update to Council prior to filing notice of rulemaking with the Secretary of State. **(Potential Future Action)**