



# Oregon

Kate Brown, Governor



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**Date:** November 3, 2016  
**To:** Oregon Energy Facility Siting Council  
**From:** Jason Sierman, Policy Analyst  
Todd Cornett, ODOE Assistant Director / EFSC Secretary

**Subject:** Action Item: Authorize staff to file formal public notice of the Amendment Processes rulemaking to: amend and repeal existing rules in Div. 27 and Div. 15; adopt new rules in Div. 27; and relocate condition rules under a new Div. 25.

## **Rulemaking Authority and Scope of Rulemaking**

The Energy Facility Siting Council (EFSC or “the Council”) has general rulemaking authority to develop standards and rules for the siting of energy facilities under ORS 469.470, and specific rulemaking authority to establish the type of amendment that must be considered in a contested case proceeding under ORS 469.405.

In addition to the recommended changes to Division 27, the scope of the Amendment Process rulemaking includes recommended changes to Div. 15, the addition of a new Div. 25 in order to remove and relocate Council rules related to the conditions it imposes on site certificates, and any other changes necessary to update existing cross-references throughout the Council’s Chapter 345 rules.

This rulemaking is not intended to alter the substantive aspects of how the Council’s rules and standards apply to the Council’s review of a request for an amendment to a site certificate. The scope of this rulemaking is intended to be strictly procedural in nature and effect.

## **Historical Background**

At its August 24, 2012 meeting, the Council directed its Oregon Department of Energy staff (staff) to perform a comprehensive analysis and evaluation of how well the Council’s rules related to the site certificate amendment processes were functioning and how those rules could be improved. The existing rules covering the various types of changes that require an amendment and the specific amendment processes that apply to specific types of amendments are all located in Div. 27 of EFSC’s rules (EFSC rules are located in Chapter 345 of Oregon’s Administrative Rules).

Following the Council directive, from August 2012 to October 2014, staff worked on developing concepts that would improve the existing amendment processes. During this phase of concept development, staff received and considered public input on the site certificate amendment processes by holding two public workshops and three Rulemaking Advisory Committee (RAC) meetings. Public input ranged from comments on how the existing amendment processes function to suggestions of what modifications could be made to improve them (*for a list of RAC members, see Attachment B*).

Throughout this concept development timeframe, staff considered many ideas for improvement. In general, staff evaluated the effectiveness of the various ideas for improvement by balancing the Council's interest in process efficiency against the Council's interest in ensuring meaningful public participation.

At its November 21, 2014 meeting, the Council received staff's analysis of two potential rulemaking concepts and directed staff to draft rule language for both concepts.

### **Council's Direction to Staff**

The first version of rules Council directed staff to draft (the Version 1 rules) creates a new standard, "one-size-fits-most," amendment process. The new standard, one-size-fits-most process would be a generally applicable process that Council would use to review most types of proposed changes. The idea of having most types of proposed changes reviewed through a standard process is not new and is in keeping with how existing rules are written. Existing rules have three processes: a standard, one-size-fits-most process; a transfer process; and an expedited process. Ultimately, the Version 1 rules staff has drafted amount to a wholesale re-write of the existing amendment rules.

The procedural steps staff is recommending in its Version 1 rules containing the new standard amendment process would function quite differently than the steps of the existing standard amendment process. The new standard process's applicability, however, would be the same as the applicability of the existing standard amendment process in that all types of proposed changes other than a transfer would be reviewed through one standard amendment process.

The second version of rules the Council directed staff to draft (Version 2 rules) is a new set of rules containing two types of processes other than the transfer process. When the Council directed staff to write the Version 2 rules, it did not give staff specific direction as to how these two different processes would apply to the different types of proposed changes. However, the general idea for one of the processes was to have it closely resemble the new standard process of the Version 1 rules and apply it to types of changes with a relatively larger magnitude of potential impacts to the resources protected by the Council's standards. The general idea for the second process was for it to have fewer procedural steps and apply it to types of changes with a relatively smaller magnitude of potential impacts to the resources protected by the Council's standards.

Before introducing recommended changes and new steps to the existing amendment rules, it is helpful for a brief overview of the existing types of changes that require an amendment and the existing amendment processes.

### **Existing Types of Changes that Require an Amendment**

There are four types of changes that require an amendment to the site certificate in the existing rules. Three narrowly defined types of changes that require an amendment are those that would:

1. Extend construction deadlines,

2. Transfer the legal right to possession and control of the site or the facility, and
3. Apply later-adopted laws to the facility.

The fourth type of change that requires an amendment is more broadly defined. Under the fourth type of change, an amendment is required to design, construct or operate a facility in a manner different from the description in the site certificate if the proposed change:

1. Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interests protected by Council standards;
2. Could impair the certificate holder's ability to comply with a site certificate condition; or
3. Could require a new condition or a change to a condition in the site certificate.

Collectively, this fourth type of change can be referred to as "the 3 could's."

The existing rules also contemplate a fifth type of change, a change that would add area to the site boundary. Unlike the other four types of changes, however, adding area to the site boundary alone does not require an amendment under existing rules. Existing rules only require an amendment for a proposed change that adds area to the site boundary if adding area, or if some other change proposed in the same request for amendment to add area, triggers "the 3 could's" to apply.

### **Existing Types of Amendment Processes**

Generally, under the existing rules, the Council reviews requests for amendment through two different processes. The standard amendment process and the transfer amendment process.

The standard amendment process is generally applicable to all other types of changes that require an amendment to the site certificate. Changes requiring an amendment under existing rules consist of:

- Applying later-adopted laws;
- Extending construction deadlines;
- All other changes where the certificate holder, staff or the Council determine any of "the 3 could's" apply.

The transfer amendment process applies when there is a change in ownership that requires a transfer of the site certificate. A transfer of the site certificate is required when the person (or entity) who will have the legal right to possession and control of the site or the facility does not have authority under the site certificate to construct, operate or retire the facility. This process is in existing rule OAR 345-027-0100.

### **Overview of Key Procedural Steps Being Recommended**

As directed by the Council, and as staff heard from the RAC and members of the public at large, the ultimate goals of staff's recommended rule revisions are to enhance the opportunity for meaningful public participation while minimizing process inefficiencies.

In regard to the existing standard process applicable to all types of changes other than transfers, staff recommends the addition of several new steps. The new steps would result in a new standard amendment process applicable to all proposed changes that require an amendment other than transfers. This new standard amendment process borrows some steps from the existing review process for site certificate applications, including adding steps for completeness determination, a draft proposed order, and a public hearing on the draft proposed order. These steps are all currently included in the review of a site certificate application, but currently excluded from the existing standard amendment process.

The major steps staff is proposing are summarized briefly in the following pages. Each of the steps identified below corresponds to the numbered steps on the **Version 1 Rules – New Standard Process** chart that is supplied in the series of process charts in **Attachment A**.

In addition to the new major steps, staff is also recommending that an amendment to the site certificate be required for changes proposing to add any quantity of area to the site boundary. This differs from the existing amendment process, where existing rules only require an amendment for a proposed change that adds area to the site boundary if adding area, or if some other change proposed in the same request for amendment to add area, triggers “the 3 could’s” to apply. Staff’s rationale for requiring an amendment to the site certificate for changes proposing to add area to the site boundary is that adding new area carries a relatively high risk of relatively high impacts to the resources the Council’s rules and standards are designed to protect. Also, compared to other types of proposed changes, adding area to the site boundary increases the likelihood that new neighboring property owners could be affected by the proposed change.

#### **Step 0: Pre-Amendment Conference (PAC)**

Staff is recommending a voluntary PAC be made available to certificate holders in rule for most amendments. However, staff recommends that amendments proposing to add area to the site boundary require a PAC.

The rationale for adding this step to the rules is to promote the exchange of helpful information between the staff and the certificate holder. Because there is so much more variety in the context of amendments to site certificates compared to original applications for site certificates (different types of changes that require an amendment and different type of amendment processes) the PAC is a valuable option that all certificate holders should be aware of. Currently, informal PACs are often already held between staff and the certificate holder despite there being no mention of them in the Council’s rules. The recommended rule change will formalize this practice.

One current challenge with requests for amendments proposing to add area to the site boundary is that any additional area must be evaluated against all of Council’s applicable standards. This requires staff to establish appropriate analysis area distances. Without a PAC, the certificate holder is likely not to know what these distances are, and therefore likely not to submit all the information in its RFA that staff needs to conduct its review. Also, compared to

other types of proposed changes, adding area to the site boundary increases the likelihood that new neighboring property owners could be affected by the proposed change.

The PAC allows staff and the certificate holder an early opportunity to talk through important substantive and procedural issues related to the request. It can provide the certificate holder with important information that will help them prepare a more complete RFA, and it can provide staff with early notice about a pending amendment request that will help staff better plan its staffing resources.

### **Step 1: Preliminary Amendment Request (pRFA)**

Staff recommends that all requests for amendments (RFAs) be deemed a preliminary request for amendment (pRFA) until staff determines that the certificate holder has submitted all the information necessary for staff to complete its review of the RFA.

Staff is recommending the addition of this step because there is often a need for staff to request additional information from a certificate holder after the certificate holder has submitted its RFA. However, the current rules do not expressly institute a set period of time for staff and the certificate holder to exchange the information required for an RFA to be considered complete. This is in contrast to the original application process, which expressly institutes a 60-day period of time for staff to determine if a certificate holder's original application is complete. This period of time is named the Determination of Completeness (DOC) stage.

This lack of a DOC stage in the amendment process often causes incomplete RFAs to go through an extended review period. During extended review, staff has up to 180-days from when an RFA is noticed to the public and reviewing agencies to conclude its review and issue a proposed order (PO). Without the existing amendment rules expressly stating it, it is within this 180-day time period that staff must execute its determination of completeness review. Requiring the certificate holder to submit a pRFA allows staff to institute a DOC stage into the amendment review process (see Step 2 below), which closely aligns with how the original application process functions.

After receiving a pRFA, staff will also decide whether the request should be reviewed by specific reviewing agencies before it is deemed complete. Staff will request comments from those reviewing agencies it identifies. This reviewing agency step is different than the existing amendment process and original application process, which both require that all reviewing agencies be notified. Staff recommends discretion over which agencies to send the pRFA to because compared to original applications for site certificate, the Dept. can receive a pRFA for a variety of changes with a wide range in magnitude of any potential impacts to the resources protected by the Council's rules and standards. Based on the variety of proposed changes and the magnitudes of those changes potential impacts, RFAs are more likely to not implicate every reviewing agency compared to original applications.

## **Step 2: Determination of Completeness (DOC)**

Staff is proposing to add a stage in the amendment review process where it determines whether the pRFA contains adequate information for the Council to make findings or impose conditions on all applicable Council standards. This step is consistent with the original site certificate application process and is consistent with the goal of providing staff a sufficient period of time to determine whether it needs additional information from the certificate holder in order to prepare a draft proposed order (*see Step 3 below for more discussion*).

A set period of time for staff to determine the completeness of a request for amendment provides the certificate holder with process clarity and timing certainty. Including a specific stage in the review process for staff to provide the certificate holder with detailed feedback on its amendment request will likely increase the overall efficiency of the staff's review by avoiding confusion, reducing conflicts, and reducing the amount of time that the certificate holder may have otherwise wasted in filing an incomplete, or fatally flawed, amendment request.

## **Step 3: Draft Proposed Order (DPO)**

Staff is proposing to issue a DPO containing staff's written analysis of the certificate holder's RFA compliance with all applicable laws and Council standards. The DPO will be the first written document reflecting staff's analysis and draft recommendations issued to the public. In contrast, under the existing process, the first written document reflecting staff's analysis and recommendations issued to the public is a proposed order (PO). Adding this step would make the amendment review process more consistent with the existing review process for original site certificate applications.

The intent behind the addition of a DPO is to give the public and the certificate holder the information needed to make effective and meaningful comments on the certificate holder's RFA and on staff's analysis of that RFA. Based on staff's review and consideration of the RFA, the DPO provides the public and the certificate holder the findings of fact and conclusions of law that the staff proposes for each applicable siting standard.

## **Step 4: Public Comment and Hearing on the DPO**

In the existing amendment process, upon receipt of an RFA, the staff solicits comments on the RFA from the public and reviewing agencies. These comments are received before staff issues a document containing staff's analysis of how the RFA complies with applicable siting standards. After receiving comments on the RFA, staff reviews all comments, then completes its analysis of the RFA, and then issues a PO. Once a PO is issued, staff solicits comments and requests for contested case on the PO.

In both Version 1 and Version 2 of its draft rules, staff recommends public comment be taken only on the DPO. Staff recommends eliminating the first round of comments on the RFA and the second round of comments on the PO. This will align the amendment review process with the review process for original applications for site certificates.

Taking comments on a DPO rather than an RFA has several benefits. One is that the public and the reviewing agencies have the opportunity to comment on staff's analysis in the DPO. Comments received on staff's analysis may be more meaningful compared to comments received on an RFA alone because an RFA doesn't contain findings of fact and conclusions of law. A second benefit is that, in response to these potentially more meaningful comments based on findings of fact and conclusions of law, the staff will have the opportunity to change its analysis before issuing a PO. This is in contrast to the existing amendment review process where the only comments the staff considers before issuing a PO are the comments it receives on the RFA (comments that are uninformed by any findings of fact and conclusions of law).

Another staff recommendation that aligns with the review process for an original application for a site certificate, is to include a mandatory public hearing on the DPO. The hearing will increase the public's opportunity to meaningfully participate in the review of an RFA by instituting an automatic time and place for people to provide oral comments to the staff and the Council. As is currently the case with DPO hearings on an original site certificate application, this hearing could be held either in the Council's presence or outside of its presence. Staff recommends holding this hearing in the Council's presence whenever possible.

A feature of the DPO hearing and comment period staff is recommending, is for it to function as a "raise it or waive it" opportunity for people to engage in the amendment review process. As such, any person who does not properly raise an issue in a comment on the record of the DPO will not be eligible to raise new issues later in the process and will not be able to participate in a contested case on any issues. The "raise it or waive it" feature aligns with how the application review process functions, but is in contrast to how the existing amendment review process functions. In the existing amendment review process, after the PO is issued, any person can provide comment on any issue and any person can request a contested case on any issue.

#### **Step 5: Proposed Order (PO)**

Consistent with the review process of a site certificate application, the next step in the amendment review process would be a proposed order (PO). Before issuing a PO, staff would consider all oral and written comments received on the record of the DPO. The PO may or may not include the same recommendations to Council that were included in the DPO, as the PO may reflect changes from the DPO in response to comments received.

As with the application review process, staff recommends there not be a comment period on the PO. Despite the subtraction of a comment period on the PO (the existing amendment review process takes comment on the PO), staff sees the addition of the DPO and the addition of the mandatory public hearing on the DPO, as providing the public and the certificate holder with more opportunity for meaningful participation than what the existing amendment review process provides.

### **Step 6: Requests for Contested Case (CC)**

#### **(Applicable to Standard Process in Version 1 rules and Type II Process in Version 2 rules)**

Staff is recommending that requests for CC on the PO be limited to those persons who previously commented on the record of the DPO hearing and limited to only those issues a prior commenter previously raised on the record of the DPO hearing. The public comment period and the public hearing on the DPO, therefore, will function as a “raise it or waive it” opportunity for the public and the certificate holder to raise issues and preserve their ability to participate further in the review process.

The existing amendment process does not include an automatic contested case. Instead, any person may request a CC proceeding on the PO for an RFA. Requests for CC are then considered by the Council to determine if any requests meet the threshold criteria necessary for the Council to grant a CC. To grant a request for a CC, the Council must find that the request raises a significant issue of fact or law that may affect the Council’s determination that the facility, with the change proposed by the amendment, meets the applicable laws or Council standards.

In the recommended process, before the Council considers whether the request raises a significant issue of fact or law that may affect whether the facility meets the Council standards, the Council must first determine whether the person requesting a contested case on an issue raised that issue with sufficient specificity in their comments on the record of the DPO hearing. To raise an issue with sufficient specificity, a person must present facts that support the person’s position on the issue. The requirement that a comment be sufficiently specific exists in the review process for an application for a site certificate and it is being recommended in the recommended amendment review process to provide consistency with the application review process.

### **Step 7: Council Considers CC Requests**

#### **(Applicable to Standard Process in Version 1 Rules and Type II Process in Version 2 Rules)**

Staff is not recommending a substantive change in the threshold determination that Council must make before granting a CC request on a PO for an RFA from how the Council makes that determination in the existing amendment process. The Council must still find that a request raises a significant issue of fact or law that may affect the Council’s determination that the facility, with the change proposed by the amendment, meets the applicable laws and Council standards.

If the Council finds that the contested case request was properly raised on the record of the DPO hearing, and the contested case request meets the threshold determination described above, a contested case would be conducted as described in the existing Council rules. Staff is not recommending any substantive changes to how the contested case would be conducted.

If the Council finds that the contested case request was not properly raised on the record of the DPO hearing, or if the contested case request does not meet the threshold determination described above, the Council would review the proposed order and make a final decision on the

amendment request. Staff is not recommending any substantive changes to how the Council makes its final decision when there is not a contested case.

Historically, contested case requests for site certificate amendments have not been granted because the Council has determined that requests do not meet the threshold criteria required for Council to grant a contested case. This is in contrast to the original site certificate application process, where there is an automatic contested case for every application and where any person who submitted comments on the DPO may request party status in the contested case. The fact that there is always a contested case in the review process for an application for a site certificate and that there has never been a contested case in the review process for a request for amendment, highlights a major procedural difference between the opportunity to participate in the application process and the opportunity to participate in the amendment process.

The difference in the manner and frequency in which contested cases are held in the review of amendments vis-a-vis the review of applications has created a concern from the public that there is not an opportunity for meaningful public participation in the amendment review process.

To respond to this concern and as previously discussed, and while staff recommends the Council continue to have discretion over granting CC on RFAs and recommends the substantive language of the threshold determination test remain unchanged, staff recommends the addition of a mandatory public hearing on the DPO to enhance the opportunity for the public to participate in the amendment review process.

#### **No Opportunity to Request a Contested Case (CC) for Type I Process in Version 2 Rules**

Staff is recommending there be no opportunity to request a CC for the Type I Process in the Version 2 rules. This recommendation is consistent with the input received from stakeholders and the Council asking whether the amendment review process could be made more efficient if the Council applied different review processes to different types of proposed changes. To align with this idea, the Version 2 rules assign two different review processes, a Type I Process and a Type II Process, to different types of proposed changes according to an estimate of the relative magnitude of the potential impacts the various types of proposed changes have on the resources the Council's rules and standards are designed to protect.

#### **Step 8: Council's Final Decision and Scope of Review**

Staff recommends making clarifying changes to the existing rules stating how the Council makes its final decision and what the Council's scope of review is for the various types of amendments (i.e. the Council's scope of review for RFA's proposing to add new area to a site boundary differs from the scope of review for an RFA proposing to extend construction deadlines). These changes are necessary to clarify existing rule language, and to ensure consistency and compatibility with staff's recommended process changes.

## **Summary Outline of Version 1 and Version 2 Rules:**

Consistent with the Council's direction at the Nov. 21, 2014 Council meeting, Staff is providing two different versions of recommended rules for the Council to consider.

The first version of recommended rules (**Version 1 rules**) recommends creating a new standard, "one-size-fits-most" process that is either wholly applicable or partially applicable to all types of proposed changes other than a transfer. The Version 1 rules retain a separate transfer process wholly applicable to changes proposing to transfer a site certificate.

The second version of proposed rules (**Version 2 rules**) recommends: a Type I process, a Type II process, and a transfer process. The Type I and Type II processes are different variations of the standard process being recommended in the Version 1 rules. The Type I process is applicable to a RFA proposing a change where any of "the 3 could's" apply.<sup>1</sup> The Type II process is applicable to: a RFA to apply later-adopted law, a RFA to add area to a site boundary, and a RFA to extend construction deadlines.

### **Version 1 Rules:**

- New Standard Process
  - Described in multiple rules: OAR 234-027-000E, -000F, -000G, -000H, -000I, -000J, and -000K; and
  - Consists of the following major steps:
    - 1) Pre-Amendment Conference (PAC),
    - 2) Preliminary Request for Amendment (pRFA),
    - 3) Determination of Completeness (DOC),
    - 4) Draft Proposed Order (DPO),
    - 5) Comment & Public Hearing on the DPO,
    - 6) Proposed Order (PO),
    - 7) Contested Case (CC) Requests & CC if granted, and
    - 8) Council's Final Decision;
  - Applicable to:
    - Later-adopted laws (PAC is voluntary and the pRFA and the timing of completeness are described in OAR 345-027-0090)

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<sup>1</sup> "The 3 could's" is short-hand for the applicability of existing rule OAR 345-027-0050(1), the substance of which is now in proposed rule OAR 345-027-000A. The substantive rule language from either of those rules requires an amendment to a site certificate to design, construct or operate a facility in a manner different from the description in the site certificate if the proposed change:

- 1) **Could** result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interest protected by a Council standard;
- 2) **Could** impair the certificate holder's ability to comply with a site certificate condition; or
- 3) **Could** require a new condition or a change to a condition in the site certificate.

- Extending construction deadlines (PAC is voluntary)
  - Adding area to site boundaries (**PAC is mandatory**)
  - All others - aka “the 3 could’s” (PAC is voluntary)
- Transfer process
  - Wholly contained in a stand-alone rule, OAR 345-027-0100.
- General rules for any proposed changes:
  - 345-027-000A Changes Requiring an Amendment
  - -0AAA Requests for Amendment Process
  - -000B Changes Exempt from Requirement an Amendment
  - -000C Written Evaluations for Changes Not Requiring an Amendment
  - -000D Amendment Determination Request

## Version 2 Rules:

- Type I process
  - Described in multiple rules: OAR 345-027-000E, -000F, -000G, -000H, -000I, -000J, and -000K;
  - Consists of the following major steps:
    - 1) Pre-Amendment Conference (PAC),
    - 2) Preliminary Request for Amendment (pRFA),
    - 3) Determination of Completeness (DOC),
    - 4) Draft Proposed Order (DPO),
    - 5) Comment & Public Hearing on the DPO,
    - 6) Proposed Order (PO), and
    - 7) Council’s Final Decision;
  - Applicable to:
    - Later-adopted laws (PAC is voluntary, the pRFA and completeness timing are described in OAR 345-027-0090)
    - Extending construction deadlines (PAC is voluntary)
    - Adding area to site boundaries (**PAC is mandatory**)
- Type II process
  - Described in multiple rules: OAR 345-027-000E, -000F, -000G, -000H, -000II, -000JJ, and -000K and
  - Consisting of the following major steps:
    - 1) Pre-Amendment Conference (PAC),
    - 2) Preliminary Request for Amendment (pRFA),

- 3) Determination of Completeness (DOC),
  - 4) Draft Proposed Order (DPO),
  - 5) Comment & Public Hearing on the DPO,
  - 6) Proposed Order (PO),
  - 7) Contested Case (CC) Requests & CC if granted, and
  - 8) Council's Final Decision;
- Applicable to:
    - All others - aka "the 3 could's"
  - Transfer process
    - Wholly contained in a stand-alone rule, OAR 345-027-0100
  - General rules useful for any proposed changes:
    - 345-027-000A Changes Requiring an Amendment
    - -00AA Requests for Amendment Process
    - -000B Changes Exempt from Requirement an Amendment
    - -000C Written Evaluations for Changes Not Requiring an Amendment
    - -000D Amendment Determination Request

### **Recommended Applicability**

For any changes the Council may make to its existing rules governing the existing amendment processes, staff recommends that all in-process RFAs be reviewed through the existing amendment processes applicable to whatever type of proposed change is covered by the in-process RFA. Staff recommends that any new amendment processes instituted by rules the Council may choose to adopt be made applicable to only those RFA's received after the future effective date of any permanent rules the Council may adopt.

## **Rulemaking Process Update:**

Based on Council's direction, staff has completed the rulemaking process as illustrated below. The remaining steps that are yet to be completed are also indicated with a brief discussion on each.

If Council determines a version of rules that it would like to proceed with, the next step in the rulemaking process would be to obtain input from RAC members on the fiscal impacts of the proposed rule language. To complete this step, staff would convene a meeting with the RAC to solicit the RAC's input on the fiscal impacts of any proposed rules.

After receiving and considering the RAC's input on fiscal impacts, staff would then issue formal notice of the proposed rulemaking by filing the necessary forms with the Secretary of State's office and sending notice to EFSC stakeholders, the Associated Press and the Capitol Press Room, and certain legislators.

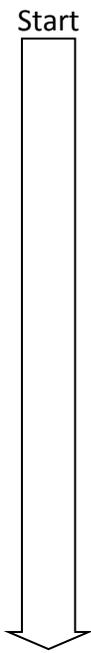
The comment period is a required part of the rulemaking process. The comment period would open upon notification being sent and close at a date and time specified by staff. Staff recommends the comment period include one public hearing and for the comment period to close at the end of the hearing. The public hearing would take place at a regularly-schedule Council meeting. Based on oral and written comments received, the Council could extend the comment period. For any extended comment period, the Council may or may not elect to hold another rulemaking hearing. If the comment period is extended, staff will send notice of the extended deadline and, if applicable, the date and time of the additional rulemaking hearing to EFSC stakeholders, the Associated Press and the Capitol Press Room, and certain legislators.

After the comment period ends, staff will aggregate all comments received into a hearing's officer report. While the hearing officer of the rulemaking hearing will be the Council chair, the hearing officer's report will be written by Council staff. The hearing's officer report may contain staff analysis and staff recommendations in response to certain comments received. The report will be presented to the Council for its consideration at a subsequent Council meeting.

After the Council considers all comments received, the Council may direct staff to make changes to the proposed rules in response to comments received. If the Council directs the staff to make changes to the proposed rules, the Council could ask staff to return to the Council with the changes at a future Council meeting or the Council may vote on the adoption of the proposed rule language as permanent rules pursuant to the changes it directs staff to make. If the Council does not wish to make changes to the proposed rules Council may vote on the adoption of the proposed rule language as permanent rules.

Subject to Council adoption, staff will ask for signature authorization from the Council Chair to file the permanent rules with the Oregon Secretary of State. Subject to Council adoption of permanent rules, and subject to receiving authorization to file, staff would file permanent rules. The new rule language would become effective upon filing.

**RECOMMENDED PROCESS**

|   |  |                                     |
|---|--|-------------------------------------|
|  | Council Authorization                        | <input checked="" type="checkbox"/> |
|   | Concept Development                          | <input checked="" type="checkbox"/> |
|   | Public Workshops                             | <input checked="" type="checkbox"/> |
|   | Council Review of Concepts                   | <input checked="" type="checkbox"/> |
|   | Rulemaking Advisory Committee (RAC)          | <input checked="" type="checkbox"/> |
|   | Council Review of Concepts                   | <input checked="" type="checkbox"/> |
|   | Draft Rule Language                          | <input checked="" type="checkbox"/> |
|   | Council Review of Draft Language             | <input checked="" type="checkbox"/> |
|   | RAC Review for Fiscal Impacts                | <input type="checkbox"/>            |
|   | Public Notice of Rulemaking Hearing          | <input type="checkbox"/>            |
|   | Public Comments                              | <input type="checkbox"/>            |
|   | Public Hearing(s) (before Council)           | <input type="checkbox"/>            |
|   | Hearing Officer Report                       | <input type="checkbox"/>            |
|   | Any Changes to Rules in Response to Comments | <input type="checkbox"/>            |
|   | Council Adoption                             | <input type="checkbox"/>            |
| File Permanent Rules  | <input type="checkbox"/>                     |                                     |

**Staff's Recommendation:**

Staff recommends the Council authorize staff to proceed in the rulemaking process with Council's choice of proposed rule language. Specifically, staff recommends the Council direct staff to:

1. Solicit and gather input from the RAC on the fiscal impacts of the proposed rule language of its choice.
2. Issue formal public notice of the Div. 27 rulemaking.
3. Specify a comment period that includes one rulemaking hearing to take place at a future Council meeting and presided over by the Council.