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To: Oregon Energy Facility Siting Council (EFSC)
From: Jason Sierman, Policy Analyst
Todd Cornett, ODOE Assistant Director / Council Secretary
Date: February 9, 2017

Subject: Information Item: Receive comments during the hearing for the Amendment Processes rulemaking
Action Item: Deliberate and decide on next steps for the Amendment Processes rulemaking

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 proposed changes to Division 27, the scope of the Amendment Processes rulemaking includes proposed changes to Div. 15, the addition of a new Div. 25 into which the Council rules related to the conditions it imposes on site certificates may be relocated, and any other changes necessary to update existing cross-references throughout the Council’s Chapter 345 rules.

The ultimate goals of the proposed rules are to enhance the opportunity for public participation while minimizing increases in review time. 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 and Council’s Past Direction to Staff

More information on the background of this rulemaking and on Council’s prior direction to staff can be found on the EFSC website in the staff reports and meeting minutes for the following past EFSC meetings:

2012: May 10-11, Aug. 24, Nov. 2

2013: Jan. 25, Mar. 15, May 3, June 21, Sept. 27

2014: May 9; Nov. 21;

2016: June 17; Aug. 18-19; Nov. 3

In addition to the materials associated with the above referenced EFSC meetings, more information on the Public Workshops and the Rulemaking Advisory Committee (RAC) meetings

that were held to gather public input on this rulemaking can be found on the EFSC rulemaking webpage under the following posting dates:

2013: Feb. 19, July 2

2014: Apr. 8, Apr. 16, June 6, June 19, Oct. 7, Nov. 25

2017: Jan. 19

Council's Latest Direction to Staff

At its Nov. 3, 2016 meeting, the Council was presented two versions of draft rules for its consideration. Staff created the two versions of draft rules in response to direction staff received from the Council on Nov. 21, 2014. After considering the two versions of draft rules, the Council directed staff to make minor modifications to the "Version 1" draft rules and selected the modified Version 1 draft rules as the proposed rules for this rulemaking.

At that meeting, Council also directed staff to file official public notice of the proposed rules. Official public notice is the first step in the rulemaking process, and alerts the public, EFSC stakeholders, and certain Oregon legislators, of the comment period and the rulemaking hearing by which people may provide comments on the proposed rules.

Council also indicated to staff that it would like to hear a first round of comments on the proposed rules at its Feb. 24, 2017 meeting and a second round of comments at a future meeting. Based on that indication, it is not anticipated that the Council will take action to approve the proposed rules at its Feb. 24 meeting. However, if the Council did decide to take action and adopt the proposed rules on Feb. 24, permanent rules could be filed and become effective as early as March 10, 2017.

During the public comment period for this rulemaking, staff anticipates it may receive comments that raise questions and ideas about how the proposed rules could possibly be revised to allow certificate holders to add area to site boundaries without going through the standard review process. Staff also anticipates it may receive comments that raise questions and ideas about how the proposed rules could possibly be revised to allow the Council to review, under special circumstances, a request for amendment (RFA) in an expedited and/or emergency manner rather than the standard review process being proposed.

Because staff considers these two issues (how rules allow for area to be added to site boundaries and how RFA's can receive expedited/emergency reviews) to be within the scope of this rulemaking notice, the Council could direct its staff to revise the proposed rules and/or adopt new rules to address these issues as part of this rulemaking.

Supplemental Documentation

Staff has prepared several supplemental documents relating to this rulemaking. The following documents can be found under the "Site Certificate Amendment Process" subject on the [EFSC rulemaking webpage](#) and are attachments to this staff report:

- Attachment A: Crosswalk Document – Narrative comparison of existing rules to proposed changes
- Attachment B: Process Charts – Visual map of existing RFA process and proposed RFA process
- Attachment C: Proposed Rules - Clean OAR Chapter 345, Division 27
- Attachment D: Proposed Rules - Redline OAR Chapter 345, Division 27
- Attachment E: Proposed Rules - Redline OAR Chapter 345, Division 15
- Attachment F: Proposed Rules - Redline OAR Chapter 345, Division 25

Summary of Major Steps in Proposed Rules

The proposed rules would provide a standard, generally applicable, one-size-fits-most process that the Council would use to review most types of changes proposed by energy facility site certificate holders in an RFA. The idea of having most types of proposed changes reviewed through a standard process is not new and is consistent with existing rules. Existing rules provide three Council review processes: a standard, one-size-fits-most process; a transfer process; and an expedited process. The proposed rules provide for two processes: a standard, one-size-fits-most process and a transfer process. Ultimately, the proposed rules amount to a wholesale re-write of the existing rules governing the Council's processes for reviewing RFAs.

The procedural steps of the proposed rules would provide a new standard amendment process that would function quite differently than the steps of the existing standard amendment process. 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.

The new standard process would be applicable to the same types of changes that are proposed by site certificate holders under the existing rules. In other words, all types of proposed changes that require an RFA under existing rules would also require an RFA under the proposed rules, and transfers of site certificate holders or transfers in ownership of site certificate holders would continue to be reviewed through the transfer review rules of 345-027-0100.

The major steps of the new standard amendment process being proposed in this rulemaking are summarized briefly in the following paragraphs:

Pre-Amendment Conference (PAC)

Proposed rules codify how a voluntary PAC is available to certificate holders for most types of proposed changes. Council staff has always been available for consultation to assist a certificate holder before submission of a request for amendment, but people may not have been aware of this option due to it not being written in rule. One exception to the voluntary nature of the PAC is that the proposed rules would require the certificate holder to participate in a mandatory PAC with staff before submitting an RFA for a change proposing to add area to the site boundary. For all other types of proposed changes, the PAC is voluntary.

Preliminary Amendment Request (pRFA)

Proposed rules require all 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.

The proposed rules requiring a pRFA would function broadly the same as existing rules requiring the initial RFA. The reason for defining a discrete pRFA step in the process is because of the proposed rule that would formally institute a Determination of Completeness step. Despite there not being a formal Determination of Completeness provision in existing rules, in practice, every time staff receives an initial RFA under the existing rules, staff must determine whether the RFA is complete. Redefining the initial process step as a pRFA, rather than an RFA, is not expected to add any additional costs to the review process.

Determination of Completeness (DOC)

Proposed rules add an explicit stage in the amendment review process for staff to determine whether the pRFA contains adequate information for the Council to make findings or impose conditions on all applicable Council standards.

As mentioned above, while existing rules do not formally provide for a Determination of Completeness (DOC) step, in practice, this step already occurs in the existing review process. It is not possible for staff to conduct its review and make a recommendation to approve an RFA to the Council without staff having a complete RFA and a complete set of supporting documents that demonstrate how the certificate holder will comply with all applicable laws and Council standards. Codifying the already existing practice of determining completeness is not expected to add a significant cost to the review process.

Under existing rules, upon receipt of an RFA, staff has 15 days to determine whether the RFA requires extended review and to send notice of the RFA to reviewing agencies and EFSC mailing lists requesting comments. If the RFA does not require extended review, staff must issue a Proposed Order (PO) within 60 days of sending notice. If the RFA does require extended review, staff must issue a PO within 180 days of sending notice. The PO is the first document issued by staff containing staff's written analysis of whether a certificate holder's RFA demonstrates compliance with all applicable laws and Council standards.

Based on staff research, the last review of an RFA under existing rules that did not require the 180 day extended review was Golden Hills Amendment #1 in 2011. The persistent need for extended review is typically driven by staff's need for additional information under 345-027-0070(2)(b). Once staff has all the information necessary for it to conduct its analysis, the RFA is considered complete. Staff makes similar requests for additional information during its review of an initial application for site certificate, only under those rules, requests for additional information are accomplished in a discrete DOC step.

Under proposed rules, upon receipt of a pRFA, staff would have up to 60 days to determine the completeness of the preliminary request. Then, from the date staff notifies the certificate holder

its request is complete, staff would have up to 120 days to issue a Draft Proposed Order (DPO). The DPO is discussed further in the section below. However, for the purposes of understanding the timing of the standard review process being proposed it is important to understand what a DPO is at this point.

In the review process for applications for site certificates, the DPO is the first document issued by staff containing staff's written analysis of whether an applicant has demonstrated compliance with all applicable laws and Council standards. However, as mentioned above, under the existing review process for RFAs, the first document issued by staff containing staff's written analysis of whether a certificate holder's RFA demonstrates compliance with all applicable laws and Council standards is the Proposed Order (PO).

With the introduction of the up to 60 day DOC step and the up to 120 day DPO step under the proposed rules, staff would have up to 180 days to issue its DPO, which would be its first document containing staff's written analysis of whether a certificate holder's RFA demonstrates compliance with all applicable laws and Council standards. This timing under the proposed rules is similar in some respects to the timing under the existing rules, but also different. It's similar in that under existing rules, after receipt of an RFA, staff has up to 180 days to issue its first document containing staff's written analysis of whether a certificate holder's RFA demonstrates compliance with all applicable laws and Council standards. It's different in that under existing rules that first document containing staff's written analysis of whether a certificate holder's RFA demonstrates compliance with all applicable laws and Council standards is a PO and not a DPO.

Under proposed rules, and as discussed in more detail in the following sections, several additional steps would take place before staff issues a PO. Staff would notice and take comment on the DPO, the Council would hold a public hearing on the DPO and consider all comments on the record of the DPO, and Council would have the opportunity to make comments and give direction to staff on any changes it would like to see in the PO.

Since current staff has only reviewed RFAs via the extended review process (up to 180 days of review) under existing rules, the 180 days it would have to review an RFA and issue its first written analysis document under the proposed rules (up to 60 days for DOC and up to 120 days to issue a DPO) is not expected to add a significant cost to that portion of the review process.

However, because the first document will be a DPO rather than a PO, and because of the additional steps being proposed (Notice and Comment on the DPO, Public Hearing on the DPO, and Council's opportunity to give direct changes it would like to see in the PO), the proposed rules will likely add additional time to the overall timing of the RFA review process. The total amount of additional timing would be dependent on the availability of Council members and the timing of Council meetings. It is very difficult to estimate the additional time of the additional steps below, but these steps have the potential to add more than 2 months to the existing extended review process.

Draft Proposed Order (DPO)

The proposed rules require staff to issue a DPO containing staff's written analysis of how the certificate holder's RFA demonstrated compliance with all applicable laws and Council standards. There is no requirement for staff to issue a DPO in existing rules. Under existing rules, rather than issuing and taking a single round of comment on a DPO, staff takes two rounds of comments. The first round of comments occurs when the RFA is initially submitted, and the second round of comments occurs after the Proposed Order (PO) is issued. Proposed rules would require staff to issue and take comment on a DPO, consider comments received on the record of the DPO, and potentially issue a PO that differs from the DPO due to revisions based on comments received. Adding this step would allow the Council more flexibility to make changes in response to comments received during the public comment period.

Under existing rules, the round of comments on the PO coincides with when requests for contested case must be made, and there are no rules directing a process for staff or Council to respond to comments received. The only direction written into the existing rules on this phase of the review process are rules stating how the Council may respond to requests for contested case. The introduction of the DPO gives the Council the opportunity to meaningfully respond to comments submitted on the PO without reissuing the PO and proving an additional comment time frame.

Because the proposed rules would move the public comment period on staff's analysis and conclusions of facts and law to an earlier stage of the review process (by instituting a comment period on the DPO rather than the PO), the comment period on the PO would no longer be necessary and would be eliminated by the proposed rules.

While the proposed addition of the DPO is an additional step, the time and effort staff would spend generating the analysis and conclusions of facts and law that would make up the DPO are commensurate with the time and effort staff spends under existing rules to generate the same analysis and conclusions of fact that make up a PO. The costs associated with the time staff spends reviewing and responding to comments on the record of the PO under existing rules are also expected to be commensurate with the time staff would spend reviewing and responding to comments received on record of the DPO. On the whole, since the proposed rules would effectively transform the existing comment period on the PO into a new comment period on the DPO, there is not expected to be a significant additional cost associated with these proposed changes.

Public Comment and Hearing on the DPO

In the existing amendment process, upon receipt of an RFA, staff solicits comments on the RFA from the public and reviewing agencies. After receiving comments on the RFA, staff reviews all the timely comments it receives, completes its analysis of how the RFA complies with all applicable laws and Council standards, and then issues its analysis and recommendations in a PO. Once a PO is issued, staff solicits a second round of comments and solicits requests for contested case on the PO.

The proposed rules consolidate the two existing comment periods into a single round of comments after the issuance of the DPO. Rather than taking comments on a potentially incomplete RFA and in the absence of staff's analysis and recommendations under existing rules, taking comments after a DPO under the proposed rules allows for comments to be based on a complete RFA and staff's initial analysis and conclusions of facts and law as to whether the certificate holder has demonstrated compliance with all applicable laws and Council standards.

The proposed rules also provide for a mandatory public hearing on the DPO. The hearing would increase the public's opportunity to participate in the review of an RFA by instituting an automatic time and place for people to provide oral comments. To ensure the Council hears all testimony directly, the DPO hearing for an RFA would always be conducted by the Council itself rather than by an appointed hearing's officer.

The public hearing would very likely occur at a regularly scheduled EFSC meeting (based on the availability of Council members, efficiency and convenience). The public hearing would be scheduled inside of whatever comment period is prescribed by staff (a comment period not less than 20 days from the Dept.'s issuance of a Draft Proposed Order (DPO)).

While the addition of a mandatory public hearing is an additional step, the hearing would likely take place at an EFSC meeting with several other agenda items. Because EFSC meeting costs are prorated based on the time associated with each agenda item, costs associated with such a hearing would therefore only be a fraction of the overall costs associated with convening the Council and staff. Also, because of the variance in the timing of when staff would issue a DPO for a RFA and the variance in the timing of regularly scheduled EFSC meetings, the addition of a mandatory public hearing could sometimes require a slightly longer public comment period for the DPO relative to the duration of the public comment period under existing rules for the PO. However, it is useful to remember that the initial comment period on the RFA under existing rules would also be eliminated in the proposed rules, which would likely offset any increase in the duration of the comment period proposed for the DPO.

While there would be an additional cost associated with adding a mandatory public hearing on the DPO, any increase is likely to be small relative to the costs already incurred by site certificate holders under the existing review process in existing rules.

A feature of the proposed DPO hearing and comment period 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 would not be eligible to raise new issues later in the process and would not be able to participate in a contested case on any issues. In the existing amendment review process, after the PO is issued, anyone can provide comment on any issue and anyone can request a contested case on any issue.

Proposed Order (PO)

The proposed rules would retain the requirement in existing rules that staff issue a PO. However, as discussed above, under the proposed rules staff would have issued a DPO before issuing a PO. Before issuing a Proposed Order (PO), staff would consider all oral and written comments

received on the record of the DPO. Because the recommendations in the DPO may change in response to comments received on the DPO, the PO may or may not include the same recommendations to the Council that were made in the DPO.

The proposed rules subtract a comment period from the procedure a certificate holder must go through to make an amendment to its site certificate. Existing rules require two comment periods. The first comment period allows state agencies, units of local government and the public to comment on the RFA submitted by the certificate holder and received by staff. The second comment period allows the certificate holder, state agencies, units of local government defined in OAR 345-001-0010(52) and the public to comment on the PO, which contains staff's analysis and conclusions of facts and law. The proposed rules only require a single comment period, the comment period on the DPO described above, within which the newly proposed mandatory public hearing would occur. Not only would the proposed rules eliminate the first comment period on the RFA, but the proposed rules would relocate the second comment period earlier in the review process to become a comment period on the DPO.

As discussed above, the proposed rules would not include a comment period on the PO. However, it's expected that with the addition of the DPO and the mandatory public hearing on the DPO, the public and the certificate holder would have more opportunity for participation than what the existing amendment review process provides.

Finally, because of the significant amount of time staff would have already spent on creating a DPO, it's expected that any additional amount of time and effort staff would subsequently spend on converting a DPO to a PO would be significantly less than the amount of time staff spent creating the DPO and is not expected to add a significant cost to the review process.

Requests for Contested Case (CC)

Proposed rules require requests for CC on the PO be limited to those 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, would 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.

While this would be a change as to who would be eligible to request a CC at this stage of the review process, under the proposed rules anyone can participate and comment on the record of the DPO and thereby ensure their eligibility to request a CC. Therefore, because the rules alone do not restrict who can request a CC in the review process for amendments, there are not expected to be any additional costs associated with the CC provisions in the proposed rules.

Council Considers CC Requests

Proposed rules would not make any changes to how the Council considers and evaluates CC requests to determine whether to grant a CC for a RFA. The existing amendment process does not include an automatic CC. 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. Proposed rules clarify the language describing this Council's CC determination process, but proposed rules make no substantive changes to how this process functions in existing rules.

Under proposed rules, if the Council finds that the CC request was properly raised on the record of the DPO hearing, and the CC request meets the threshold determination described above, a CC would be conducted as described in the existing Council rules. Proposed rules would not make any substantive changes to how the CC would be conducted. If the Council finds that the CC request was not properly raised on the record of the DPO hearing, or if the CC 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. Proposed rules would not make any substantive changes to how the Council makes its final decision when there is not a CC.

Council's Final Decision and Scope of Review

Proposed rules clarify 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. under existing rules, 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 the other rule changes being proposed.

Summary of Other Major Changes in Proposed Rules

In addition to the new steps being proposed, the proposed rules also:

- Require an RFA for changes proposing to add any quantity of area to the site boundary,
- Change rules for RFAs to extend construction deadlines, and
- Eliminate the expedited review process under 345-027-0080.

RFA Required for Adding Any Area to Site Boundary

Requiring a certificate holder to submit an RFA to add area to a site boundary differs from the existing amendment process. 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 RFA to add area, triggers any of the thresholds under existing rule 345-027-0050(1):

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

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 likelihood of 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.

This aspect of the proposed rules could add new costs to certificate holders because under existing rules it is possible to add area to a site boundary without making a request for amendment. Staff expects its stakeholders to address the issue of how certificate holders can add area to site boundaries during the public comment period for this rulemaking. In response to comments received, the Council may direct its staff to revise the proposed rules in a manner that would give the Council or its staff discretion in deciding on a case by case basis whether a certificate holder's proposal to add area to its site boundary would require a request for amendment.

Changing the Rules for RFAs to Extend Construction Deadlines

Proposed rules would require certificate holders seeking an extension of construction deadlines to submit a preliminary request for amendment (pRFA). Receiving a pRFA would allow staff to determine the completeness of the request for extension under the Determination of Completeness (DOC) rule. As in existing rules, proposed rules would suspend the expiration of the site certificate until the Council acts on the request for extension. Because staff must determine the completeness of any request it receives under existing rules, instituting the pRFA and DOC phases in the proposed rules codifies existing practices and is not expected to add a significant cost to the review process.

As proposed, a certificate holder would need to submit its pRFA to extend construction deadlines before the applicable construction deadline it wishes to extend, but no earlier than the date 12 months before the applicable construction deadline. This change eliminates the existing requirement to submit an RFA to extend construction deadlines no later than 6 months before the date of the applicable deadline, or, if the certificate holder demonstrates good cause for the delay in submitting the request, no later than the applicable deadline. The intent behind the "good cause" exception to the requirement that requests to extend construction deadlines must be submitted no later than 6 months before the applicable deadline, and the 6 month requirement itself, was, seemingly, to codify safeguards into rule that would prevent the Council review process from eroding into any time extension the Council may grant the certificate holder in an approved RFA. However, the risks associated with submitting a request to extend a deadline close in time to the applicable deadline are borne by the applicant, and staff sees no value in a rule designed to protect the certificate holder from taking on those risks.

The thought behind the change preventing a certificate holder from submitting its request for extension no earlier than 12 months before the applicable deadline is that it would prevent certificate holders from extending construction deadlines well in advance of the original deadlines. In other words, if a site certificate was issued in 2017 with a 3 year construction deadline of 2020 (a 3-year window), under the proposed rules, the certificate holder would be prevented from making a 2018 request to extend deadlines to 2023 (resulting in a 5-year window). This change is not expected to add a significant cost to the review process.

Proposed rules would change how the Council may extend deadlines in an approved amendment by moving from the existing limit of not more than 2-years from the deadlines in effect to either: an automatic 3-year extension from the deadlines in effect when there is no contested case granted on the amendment, or a 2-year extension from the date the Council grants the amendment following a contested case proceeding. The shorter 2-year extension following a contested case is justified because it recognizes the amount of time a contested case consumes (often a year or more). This change is not expected to add a significant cost to the review process.

Proposed rules would impose a limit to how many amendments a certificate holder can receive to extend construction deadlines. As proposed, this limit is 2 amendments. In the original approval of a site certificate, Council has unlimited discretion on when to set the deadline to begin construction. The Council has typically set a 3-year construction deadline when approving site certificates. Assuming Council continues to set a 3-year time frame, by allowing a maximum of two amendments at 3 years each, the proposed rules would allow a certificate holder up to 9 years to begin construction before a new application would be required. This change is not expected to add a significant cost to the review process.

Proposed rules would also eliminate the specific requirement that the Council must find compliance with the Council's carbon dioxide standards in effect at the time of the Council's order on the amendment. This change is proposed because keeping this requirement would be somewhat redundant as the requirement to comply with the carbon dioxide standards is already in place under existing rule 345-027-0070(10)(b)(C) and is proposed to remain in place under proposed rule 345-027-0071(2)(b).

Elimination of the Expedited Review Process

Proposed rules eliminate the expedited review process under existing rule 345-027-0080. Based on staff research, the last review of an RFA under the existing expedited review process was the South Mist Pipeline Extension Amendment #2 in 2003. Therefore, while it is possible for a certificate holder to encounter unforeseen circumstances where the availability of an expedited or emergency review process could be valuable, it is unclear to staff whether the existing expedited review process, or an amended form of it, should be retained.

Staff could see particular value in the availability of an emergency review process for proposed changes shown to be necessary to prevent a significant and relatively immediate threat to the public health, safety or the environment. Without the availability of an expedited or emergency review process, all changes proposed by certificate holders would be subject to the new standard review process.

Because current staff do not have experience in reviewing an RFA under the existing expedited review rule, the type of proposed change(s) and the reasons and explanations a certificate holder would have to supply under 345-027-0080(1)(b) in its request for expedited review, including an explanation of why the need for expedited review was unforeseeable by the certificate holder, are not clear. However, in addition to supplying the information required by 345-027-0080(1)(b), based on a reading of 345-027-0080(2), a certificate holder would also presumably need to show

that a delay in the review of the RFA would unduly harm the certificate holder and that the facility, with the proposed change, would not likely result in a significant new adverse impact.

Therefore, the existing expedited review process is currently only available under a very small amount of circumstances where the need for expedited review was unforeseeable by the certificate holder, where the delay of reviewing the proposed change through a process other than expedited review would unduly harm the certificate holder, and where the proposed change that would not likely result in a significant new adverse impact on the resources protected by applicable laws, Council standards and site certificate conditions.

If a certificate holder's request for expedited review was granted, the changes proposed by the certificate holder would be reviewed against all applicable laws and Council standards. Initial applications for site certificates and requests for amendment to site certificates are both evaluated by Council and staff for compliance with all applicable laws and Council standards. In that respect, the time and cost for staff to conduct its review is always commensurate with the complexity of the change(s) being proposed in the site certificate holder's RFA and the quality and sufficiency of the supporting documentation the site certificate holder provides the Council and its staff with.

Because of the variety of RFAs that can be submitted by certificate holders, because the current staff lack experience in reviewing RFAs under the provisions of 345-027-0080, and because the time and effort of staff's review will always be commensurate with the complexity of the change(s) being proposed and the quality and sufficiency of supporting documentation the site certificate holder provides, any cost savings or increases of the Council's review process as a result of the elimination of 345-027-0080 are not currently known. Likewise, if the expedited review process was retained, and for the same reasons just mentioned, it is not certain that an RFA reviewed under 345-027-0080 would result in any cost savings or increases compared to an RFA reviewed under existing rules 345-027-0060 and -0070 or the new standard process under the proposed rules.

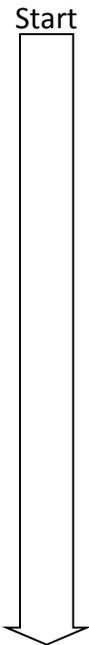
Staff anticipates it may receive comments that raise questions and ideas about how the proposed rules could possibly be revised to allow the Council to review, under special circumstances, an RFA in an expedited and/or emergency manner rather than the standard review process being proposed. Therefore, the Council could direct its staff to revise the proposed rules and/or adopt new rules to include some form of an expedited/emergency review as part of this rulemaking.

Recommended Applicability

For any changes the Council may make to its existing rules governing the existing amendment processes, staff recommends that all RFAs currently under review continue to be reviewed through the existing amendment processes. 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

Based on Council's direction, staff has completed the rulemaking process as illustrated below.

	Start	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 checked="" type="checkbox"/>
		Public Notice of Rulemaking Hearing	<input checked="" type="checkbox"/>
		Public Comments	<input checked="" type="checkbox"/>
		Public Hearing(s) (before Council)	<input checked="" 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"/>

Council's Options for Next Steps

After considering all the oral and written comments received on the record of the rulemaking hearing concluding on Feb. 24th, 2017, the Council could extend the comment period. For any extended comment period, the Council may or may not elect to hold a second rulemaking hearing.

If the comment period is extended without a second rulemaking hearing: staff must send notice of the extended deadline to EFSC stakeholders, the Associated Press and the Capitol Press Room, and certain legislators.

If the comment period is extended with a second rulemaking hearing: staff must provide notice of the extended deadline and the date/time/location of the additional rulemaking hearing through the Secretary of State's Office for publication in the Oregon Bulletin, and also send notice of the same to EFSC stakeholders, the Associated Press and the Capitol Press Room, and certain legislators.

After the comment period ends, Council could direct staff to aggregate all comments received into a hearing's officer report. A hearing's officer report may contain staff analysis and staff recommendations in response to certain comments received. If Council elects to receive a hearing's officer report it would be presented to the Council for its consideration at a subsequent Council meeting.

In response to comments received or on its own accord, the Council may direct staff to make changes to the proposed rules, so long as the changes are within the scope of the issued notice for this rulemaking. If the Council directs staff to make modifications to the proposed rules, the Council could:

1. direct staff to extend the deadline for submitting comments on the modified proposed rules, hold a second rulemaking hearing at a future Council meeting, and provide the required notice of the modified proposed rules, the extended comment deadline and the second rulemaking hearing (recommended if the modifications are relatively major);
2. direct staff to extend the deadline for submitting comments on the modified proposed rules without holding a second rulemaking hearing, and provide the required notice of the modified proposed rules and the extended comment deadline (recommended if the modifications are relatively major);
3. direct staff not to provide notice of the modified proposed rules and not extend the deadline for submitting comments on them, but to return to the Council with the modified rules at a future Council meeting so the Council may review and consider the modified rules, (recommended if the modifications are relatively minor); or
4. the Council may vote on the adoption of the proposed rule language as permanent rules pursuant to the modifications it directs staff to make (only recommended if the modifications are relatively minor).

If, after considering all comments received on the record of the rulemaking hearing (written and oral), the Council does not wish to make modifications 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.

Staff's Recommendation:

If the Council decides it would like to make modifications (major or minor) to the proposed rules, staff recommends:

- the Council give staff specific direction on the modifications it would like staff to make to the proposed rules; and
- direct staff to re-notice the proposed rules, open a new round of comment on them, and hold a second rulemaking hearing at a future Council meeting.

If the Council approves of the proposed rules as written, staff recommends the Council authorize staff to file permanent rules with the Oregon Secretary of State and make the rules effective upon filing. If approved, the earliest date the rules could be filed and made effective is March 10, 2017.

DIVISION 15
PROCEDURES GOVERNING COUNCIL AND DEPARTMENT OF ENERGY
PROCEEDINGS, INCLUDING SITE CERTIFICATE HEARINGS

345-015-0014

Contested Case Notices

(1) The Department shall issue notices for Council contested case proceedings as provided in OAR 137-003-0001 ~~and shall include in the notices:~~

(a) Contested case notices regarding proposed orders for site certificate applications shall include:

- (A) A date by which persons must request party or limited party status.
- (B) The date of the pre-hearing conference.
- (C) The time and place of the hearing.

(b) Contested case notices regarding proposed orders for site certificate amendments shall include:

- (A) The date of the pre-hearing conference.
- (B) The time and place of the hearing.
- (C) The issues and the parties the Council identified for the contested case as described in OAR 345-027-0069.

(2) In addition to the requirements of section (1), for a contested case notice on a proposed order as described in OAR 345-015-0230 or following a Council decision to grant a contested case hearing under OAR 345-015-0310, the Department shall include in the notice a statement that participation as a party or limited party in the contested case proceeding and the opportunity to raise any issue are subject to the limitations described in OAR 345-015-0016.

(3) The Department shall send a contested case notice by registered or certified mail to the following persons:

(a) For a contested case notice on a proposed order as described in OAR 345-015-0230, to the applicant and to all persons who commented in person or in writing on the record of the public hearing described in OAR 345-015-0220.

(b) Following the Council's decision to grant a contested case proceeding on a proposed order on an application for a site certificate for a special criteria facility, to the applicant and to all persons who commented in person or in writing on the record of the public hearing on the proposed order described in OAR 345-015-0320.

(c) Following a Council decision to grant a contested case proceeding on a proposed site certificate amendment under OAR 345-027-0069, ~~OAR 345-027-0080~~ or OAR 345-027-0090, to the certificate holder and to the parties the Council granted contested case party status to. ~~all persons who requested a contested case proceeding as described in OAR 345-027-0070(6) or OAR 345-027-0080(5).~~

(d) For Council contested case proceedings described under OAR 345-029-0070, OAR 345-029-0100 or OAR 345-060-0004, to persons who have an interest or represent a public interest in the outcome of the proceeding.

(4) The Department shall request that the applicant notify the hearing officer and the Department, by the date described in subsection (1)(a), of any issues the applicant

1 desires to raise in the contested case proceedings described in subsections (3)(a) and
2 (b).

3 **345-015-0016**

4 **Requests for Party or Limited Party Status in Site Certificate Application** 5 **Contested Cases**

6 (1) Notwithstanding OAR 137-003-0005(2), a person requesting to participate as a
7 party or limited party in a contested case proceeding shall submit a petition to the
8 hearing officer by the date specified in the Department of Energy's contested case
9 notice issued under OAR 345-015-0014.

10 (2) Persons who have an interest in the outcome of the Council's contested case
11 proceeding or who represent a public interest in such result may request to participate
12 as parties or limited parties.

13 (3) Except as described in section (4), only those persons who have commented in
14 person or in writing on the record of the public hearing described in OAR 345-015-
15 0220 may request to participate as a party or limited party in a contested case
16 proceeding. To raise an issue in a contested case proceeding, the issue must be within
17 the jurisdiction of the Council, and the person must have raised the issue in person or
18 in writing on the record of the public hearing, unless the Department of Energy did not
19 follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in
20 the proposed order described in OAR 345-015-230, including any recommended
21 conditions of approval, differs materially from the action recommended in the draft
22 proposed order, in which case the person may raise only new issues within the
23 jurisdiction of the Council that are related to such differences. If a person has not
24 raised an issue at the public hearing with sufficient specificity to afford the decision
25 maker an opportunity to respond to the issue, the hearing officer shall not consider the
26 issue in the contested case proceeding. To have raised an issue with sufficient
27 specificity, the person must have presented facts at the public hearing that support the
28 person's position on the issue.

29 (4) Following a Council decision to grant a contested case hearing under OAR 345-
30 015-0310, only those persons who have commented in person or in writing on the
31 record of the public hearing described in OAR 345-015-0320 may request to
32 participate as a party or limited party in a contested case proceeding on an application
33 for a site certificate. To raise an issue in a contested case proceeding, the issue must be
34 within the jurisdiction of the Council, and the person must have raised the issue in
35 person or in writing on the record of the public hearing. If a person has not raised an
36 issue at the public hearing with sufficient specificity to afford the decision maker an
37 opportunity to respond to the issue, the hearing officer shall not consider the issue in
38 the contested case proceeding. To have raised an issue with sufficient specificity, the
39 person must have presented facts at the public hearing that support the person's
40 position on the issue.

41 (5) In a petition to request party or limited party status, the person requesting such
42 status shall include:

43 (a) The information required under OAR 137-003-0005(3).

1 (b) A short and plain statement of the issue or issues that the person desires to
2 raise in the contested case proceeding.

3 (c) A reference to the person's comments at the public hearing showing that the
4 person raised the issue or issues at the public hearing.

5 (d) A detailed description of the person's interest in the contested case
6 proceeding and how that interest may be affected by the outcome of the proceeding.

7 (6) The hearing officer's determination on a request to participate as a party or
8 limited party is final unless the requesting person submits an appeal to the Council
9 within seven days after the date of service of the hearing officer's determination.

10 **345-015-0080**

11 **Participation by Government Agencies**

12 (1) Any state or local government agency other than the Department of Energy may
13 request participation in a contested case as a party, limited party or interested agency,
14 subject to the limitations described in OAR 345-015-0016. For a contested case on a
15 site certificate application, the agency shall submit the request to the hearing officer
16 in writing by the date specified in the Department of Energy's contested case notice
17 issued under OAR 345-015-0014. For a contested case on a site certificate amendment,
18 the agency shall submit the request to the Department by the date specified in the
19 notice of the opportunity to request a contested case issued under OAR 345-027-0069.

20 (2) The Department of Energy shall participate in all contested case proceedings
21 conducted by the Council and shall have all the rights of a party.

22 **345-015-0083**

23 **Prehearing Conference and Prehearing Order**

24 (1) The hearing officer may cancel or reschedule any previously noticed prehearing
25 conference.

26 (2) The hearing officer may conduct one or more prehearing conferences for the
27 purposes and in the manner described in OAR 137-003-0035. At the conclusion of the
28 conference(s), the hearing officer shall issue a prehearing order stating the issues to be
29 addressed in the contested case hearing and, in a contested case on an application for a
30 site certificate, limiting parties to those issues they raised on the record of the public
31 hearing described in OAR 345-015-0220. The hearing officer shall not receive
32 evidence or hear legal argument on issues not identified in the prehearing order.

33 (3) Failure to raise an issue in the prehearing conference(s) for the contested case
34 hearing on an application for a site certificate constitutes a waiver of that issue.

DIVISION 25
SITE CERTIFICATE CONDITIONS

4 **345-02527-000620**

5 **Mandatory Conditions in Site Certificates**

6 The Council shall impose the following conditions in every site certificate. The
7 Council may impose additional conditions.

8 (1) The Council shall not change the conditions of the site certificate except as
9 provided for in OAR Chapter 345, Division 27.

10 (2) The certificate holder shall submit a legal description of the site to the
11 Department of Energy within 90 days after beginning operation of the facility. The
12 legal description required by this rule means a description of metes and bounds or a
13 description of the site by reference to a map and geographic data that clearly and
14 specifically identify the outer boundaries that contain all parts of the facility.

15 (3) The certificate holder shall design, construct, operate and retire the facility:

16 (a) Substantially as described in the site certificate;

17 (b) In compliance with the requirements of ORS Chapter 469, applicable
18 Council rules, and applicable state and local laws, rules and ordinances in effect at the
19 time the site certificate is issued; and

20 (c) In compliance with all applicable permit requirements of other state
21 agencies.

22 (4) The certificate holder shall begin and complete construction of the facility by
23 the dates specified in the site certificate.

24 (5) Except as necessary for the initial survey or as otherwise allowed for wind
25 energy facilities, transmission lines or pipelines under this section, the certificate
26 holder shall not begin construction, as defined in OAR 345-001-0010, or create a
27 clearing on any part of the site until the certificate holder has construction rights on all
28 parts of the site. For the purpose of this rule, "construction rights" means the legal right
29 to engage in construction activities. For wind energy facilities, transmission lines or
30 pipelines, if the certificate holder does not have construction rights on all parts of the
31 site, the certificate holder may nevertheless begin construction, as defined in 345-001-
32 0010, or create a clearing on a part of the site if the certificate holder has construction
33 rights on that part of the site and:

34 (a) The certificate holder would construct and operate part of the facility on that
35 part of the site even if a change in the planned route of a transmission line or pipeline
36 occurs during the certificate holder's negotiations to acquire construction rights on
37 another part of the site; or

38 (b) The certificate holder would construct and operate part of a wind energy
39 facility on that part of the site even if other parts of the facility were modified by
40 amendment of the site certificate or were not built.

1 (6) If the certificate holder becomes aware of a significant environmental change or
2 impact attributable to the facility, the certificate holder shall, as soon as possible,
3 submit a written report to the Department describing the impact on the facility and any
4 affected site certificate conditions.

5 (7) The certificate holder shall prevent the development of any conditions on the
6 site that would preclude restoration of the site to a useful, non-hazardous condition to
7 the extent that prevention of such site conditions is within the control of the certificate
8 holder.

9 (8) Before beginning construction of the facility, the certificate holder shall submit
10 to the State of Oregon, through the Council, a bond or letter of credit in a form and
11 amount satisfactory to the Council to restore the site to a useful, non-hazardous
12 condition. The certificate holder shall maintain a bond or letter of credit in effect at all
13 times until the facility has been retired. The Council may specify different amounts for
14 the bond or letter of credit during construction and during operation of the facility.

15 (9) The certificate holder shall retire the facility if the certificate holder
16 permanently ceases construction or operation of the facility. The certificate holder
17 shall retire the facility according to a final retirement plan approved by the Council, as
18 described in OAR 345-027-0110. The certificate holder shall pay the actual cost to
19 restore the site to a useful, non-hazardous condition at the time of retirement,
20 notwithstanding the Council's approval in the site certificate of an estimated amount
21 required to restore the site.

22 (10) The Council shall include as conditions in the site certificate all representations
23 in the site certificate application and supporting record the Council deems to be
24 binding commitments made by the applicant.

25 (11) Upon completion of construction, the certificate holder shall restore vegetation
26 to the extent practicable and shall landscape all areas disturbed by construction in a
27 manner compatible with the surroundings and proposed use. Upon completion of
28 construction, the certificate holder shall remove all temporary structures not required
29 for facility operation and dispose of all timber, brush, refuse and flammable or
30 combustible material resulting from clearing of land and construction of the facility.

31 (12) The certificate holder shall design, engineer and construct the facility to avoid
32 dangers to human safety presented by seismic hazards affecting the site that are
33 expected to result from all maximum probable seismic events. As used in this rule
34 "seismic hazard" includes ground shaking, landslide, liquefaction, lateral spreading,
35 tsunami inundation, fault displacement and subsidence.

36 (13) The certificate holder shall notify the Department, the State Building Codes
37 Division and the Department of Geology and Mineral Industries promptly if site
38 investigations or trenching reveal that conditions in the foundation rocks differ
39 significantly from those described in the application for a site certificate. After the
40 Department receives the notice, the Council may require the certificate holder to

1 consult with the Department of Geology and Mineral Industries and the Building
2 Codes Division and to propose mitigation actions.

3 (14) The certificate holder shall notify the Department, the State Building Codes
4 Division and the Department of Geology and Mineral Industries promptly if shear
5 zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of
6 the site.

7 (15) Before any transfer of ownership of the facility or ownership of the site
8 certificate holder, the certificate holder shall inform the Department of the proposed
9 new owners. The requirements of OAR 345-027-0100 apply to any transfer of
10 ownership that requires a transfer of the site certificate.

11 (16) If the Council finds that the certificate holder has permanently ceased
12 construction or operation of the facility without retiring the facility according to a final
13 retirement plan approved by the Council, as described in OAR 345-027-0110, the
14 Council shall notify the certificate holder and request that the certificate holder submit
15 a proposed final retirement plan to the Office within a reasonable time not to exceed 90
16 days. If the certificate holder does not submit a proposed final retirement plan by the
17 specified date, the Council may direct the Department to prepare a proposed final
18 retirement plan for the Council's approval. Upon the Council's approval of the final
19 retirement plan, the Council may draw on the bond or letter of credit described in
20 section (8) to restore the site to a useful, non-hazardous condition according to the final
21 retirement plan, in addition to any penalties the Council may impose under OAR
22 Chapter 345, Division 29. If the amount of the bond or letter of credit is insufficient to
23 pay the actual cost of retirement, the certificate holder shall pay any additional cost
24 necessary to restore the site to a useful, non-hazardous condition. After completion of
25 site restoration, the Council shall issue an order to terminate the site certificate if the
26 Council finds that the facility has been retired according to the approved final
27 retirement plan.

28 Stat. Authority: ORS 469.470

29 Stat. Implemented: ORS 469.401, 469.501

30 **345-02527-001023**

31 **Site-Specific Conditions**

32 The Council may include the following conditions, as appropriate, in the site
33 certificate:

34 (1) If the facility uses coal, the certificate holder shall take all necessary steps to
35 ensure that surface and groundwater are not contaminated by run-off or seepage
36 associated with coal or ash storage, transport or disposal. The certificate holder shall
37 handle coal and ash so as to minimize the likelihood of coal dust and ash being
38 windblown and causing an environmental or public health problem. If the certificate
39 holder permanently disposes of ash on the facility site, the certificate holder shall cover
40 the ash with a layer of topsoil and revegetate the area.

1 (2) If the energy facility or related or supporting facility is a natural gas pipeline,
 2 the certificate holder shall submit to the Department copies of all incident reports
 3 involving the pipeline required under 49 CFR Sec. 191.15.

4 (3) If the facility includes any pipeline under Council jurisdiction:

5 (a) The certificate holder shall design, construct and operate the pipeline in
 6 accordance with the requirements of the U.S. Department of Transportation as set forth
 7 in Title 49, Code of Federal Regulations, Part 192, in effect on August 15, 2011; and

8 (b) The certificate holder shall develop and implement a program using the best
 9 available practicable technology to monitor the proposed pipeline to ensure protection
 10 of public health and safety.

11 (4) If the facility includes any transmission line under Council jurisdiction:

12 (a) The certificate holder shall design, construct and operate the transmission
 13 line in accordance with the requirements of the 2012 Edition of the National Electrical
 14 Safety Code approved on June 3, 2011, by the American National Standards Institute;
 15 and

16 (b) The certificate holder shall develop and implement a program that provides
 17 reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or
 18 structures of a permanent nature that could become inadvertently charged with
 19 electricity are grounded or bonded throughout the life of the line.

20 (5) If the proposed energy facility is a pipeline or a transmission line or has, as a
 21 related or supporting facility, a pipeline or transmission line, the Council shall specify
 22 an approved corridor in the site certificate and shall allow the certificate holder to
 23 construct the pipeline or transmission line anywhere within the corridor, subject to the
 24 conditions of the site certificate. If the applicant has analyzed more than one corridor
 25 in its application for a site certificate, the Council may, subject to the Council's
 26 standards, approve more than one corridor.

27 (6) If the facility is a surface facility related to an underground gas storage
 28 reservoir, the Council shall, in the site certificate, specify the site boundary and total
 29 permitted daily throughput of the facility.

30 (7) If the facility is subject to a carbon dioxide emissions standard adopted by the
 31 Council or enacted by statute, the Council shall include in the site certificate
 32 appropriate conditions as described in OAR 345-024-0550, 345-024-0560, 345-024-
 33 0590, 345-024-0600, 345-024-0620, 345-024-0630 and 345-024-0710.

34 Stat. Authority: ORS 469.470

35 Stat. Implemented: ORS 469.401, 469.501, 469.503

36 **345-02527-001628**

37 **Monitoring and Mitigation Conditions**

38 In the site certificate, the Council shall include conditions that address monitoring and
 39 mitigation to ensure compliance with the standards contained in OAR Chapter 345,
 40 Division 22 and Division 24. The site certificate applicant, or for an amendment, the
 41 certificate holder, shall develop proposed monitoring and mitigation plans in

1 consultation with the Department and, as appropriate, other state agencies, local
2 governments and tribes. Monitoring and mitigation plans are subject to Council
3 approval. The Council shall incorporate approved monitoring and mitigation plans in
4 applicable site certificate conditions.

5 Stat. Authority: ORS 469.470

6 Stat. Implemented: ORS 469.401, 469.501, 469.503, 469.507

7

Oregon EFSC Rulemaking - Chapter 345, Division 27
 (Revising the review processes for Amendments to Energy Facility Site Certificates)

Crosswalk – Comparing Existing Rules to Proposed Rules

The proposed rules reflect broad and wholesale changes to existing rules, and because nearly every Div. 27 rule has proposed changes, a typical “redline” document showing the proposed strikeout text and the proposed additional text may likely be uninterpretable and un navigable. This document shows the relationship between existing Div. 27 rules and the proposed Div. 27 rules. Existing rules are listed in the first column, with its corresponding proposed rule in the third column. All rows of rules marked **Amend** in the Proposed Action column indicate where there are changes in existing rule text or additional new language. All rows of rules marked **Adopt New** in the Proposed Action column indicate where there is a completely new rule with new language. All rows marked Split in the Proposed Action column indicate where an existing rule is proposed to be split into 2 or more proposed rules. All rows marked Renumber or Repeal in the Proposed Action column indicate a rule proposed to be renumbered or repealed, respectively. The Estimated Policy Impact column gives a rough indication of the policy implications of the proposed changes, where **Major** changes are estimated as more significant than Minor changes. The **rows shaded dark gray** function as visible breaks between one complete rule and the next complete rule.

List of Acronyms & Abbreviations:

ADR	Amendment Determination Request	DOC	Determination of Completeness	pRFA	Preliminary RFA
CC	Contested Case	DPO	Draft Proposed Order	RAC	Rulemaking Advisory Committee
CH	Certificate Holder	pASC	Preliminary App. for SC	RFA	Request for Amendment
Dept.	Department of Energy (Staff)	PO	Proposed Order	SC	Site Certificate

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0000 Certificate Expiration	Amend Renumber	345-027-0013		<p><u>Purpose</u> Rule stating that a site certificate expires if the Certificate Holder (CH) does not begin construction by the beginning date specified in the site certificate (SC).</p> <p><u>Summary of Proposed Change(s)</u> Move this rule so that it becomes the second rule in Division 27. The proposed language changes only improve the clarity of how the existing rule is phrased and does not change the substantive effect of the rule.</p> <p><u>Rationale</u> Reorganize the location of this rule. Proposed that the expiration rule move down to the second rule located within Division 27.</p>	Minor

Oregon EFSC Rulemaking - Chapter 345, Division 27
 (Revising the review processes for Amendments to Energy Facility Site Certificates)

Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0011 Applicability	Amend	345-027-0011		<p><u>Purpose</u> Rule stating the rules in Division 27 do not apply to certain facilities and stating that rules defining the existing standard amendment review process, the existing transfer review process, and the existing later-adopted laws review process will remain applicable to all requests for amendment and change requests received by the Department (Dept.) prior to the effective date of any new rules - defining any new amendment review processes - that may be adopted by the Council as part of this rulemaking.</p> <p><u>Summary of Proposed Change(s)</u> Language change improves the clarity of the rule and adds an applicability timing provision that allows the existing amendment rules to apply to requests for amendment and change requests received by the Dept. before the effective date of any new rules that may be adopted by the Council as part of this rulemaking.</p> <p><u>Rationale</u> Reorganization for clarity. Logic suggests an applicability rule should be the first rule in any Division. Existing rule lacks clarity as to what rules apply to facilities. If new rules are adopted by Council, it would be fair that the existing rules would apply to requests for amendment that are received by the Dept. before the effective date of any new rules.</p>	Minor

Oregon EFSC Rulemaking - Chapter 345, Division 27
 (Revising the review processes for Amendments to Energy Facility Site Certificates)

Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0020 Mandatory Conditions In Site Certificates	Renumber	345-025-0005		<p><u>Purpose</u> Rule stating the mandatory conditions that must be included in every site certificate.</p> <p><u>Summary of Proposed Change(s)</u> Reorganization only. Move the existing mandatory conditions rule to a newly created Division 25.</p> <p><u>Rationale</u> The Council must impose a set of mandatory conditions in every site certificate. Those mandatory conditions are currently provided in Division 27. However, the mandatory site certificate conditions have no substantive connection to the amendment review process. Instead the mandatory conditions are more closely related to the site certificate application review process and the Council standards. Therefore, staff believes that it would be more logical to place the mandatory conditions and the other condition related rules discussed below sequentially near the Council rules for its standards. Because the Councils rules for its standards are found in Div. 22, Div. 23, and Div. 24, staff recommends creating a new Div. 25 for the three rules relating to conditions.</p>	Minor
345-027-0023 Site Specific Conditions	Renumber	345-025-0010		<p><u>Purpose</u> Rule stating a list of site specific conditions the Council may include in approved site certificates for various types of energy facilities.</p> <p><u>Summary of Proposed Change(s)</u> Reorganization only. Move this rule to newly created Division 25.</p> <p><u>Rationale</u> Same as prior rationale.</p>	Minor
345-027-0028 Monitoring and Mitigation Conditions	Renumber	345-025-0015		<p><u>Purpose</u> Rule stating the site certificate must include conditions that address monitoring and mitigation to ensure compliance with Council standards.</p> <p><u>Summary of Proposed Change(s)</u> Reorganization only. Move this rule to newly created Division 25.</p> <p><u>Rationale</u> Same as prior rationale.</p>	Minor

Oregon EFSC Rulemaking - Chapter 345, Division 27
 (Revising the review processes for Amendments to Energy Facility Site Certificates)

Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
<p>345-027-0030 Amendment to Extend Construct. Begin & Compl. Deadlines</p>	<p style="text-align: center;">Amend ReNUMBER</p>	<p>345-027-0085 Request for Amendment to Extend Construction Deadlines</p>		<p><u>Purpose of the rule</u> Rule stating the review process for amending site certificate deadlines for beginning and completing construction.</p> <p><u>Summary of Proposed Change(s)</u> Remove the requirement to submit a request for amendment (RFA) to extend construction deadlines no later than 6 months before the existing construction deadline and the corresponding good cause exception.</p> <p>Add a provision that restricts the Dept. from accepting RFAs for extending construction deadlines any earlier than the date 12 months before the applicable construction deadline.</p> <p>Remove Council discretion over setting new deadlines by requiring that any extension will be either 3 years from the previous deadline, or, in the instance of a contested case, 2 years from the date the Council grants the amendment.</p> <p>Add a provision that limits the Council to granting no more than two RFAs to extend construction deadlines for a facility or a phase of a facility.</p> <p><u>Rationale for Proposed Changes(s)</u> Removing the requirement that RFA’s be submitted no later than 6 months before the existing construction deadline unless the certificate holder demonstrates good cause for the delay, removes a provision that has been the source of disagreement and has no corresponding standards or implementing rules. Under the existing rule, the CH is limited to a maximum two year extension from the previous deadline in effect. Therefore, under the existing rules, if a CH demonstrates good cause for not meeting the 6 month deadline, the Dept.’s review can take up some of the time of the maximum two year deadline extension the CH can receive. This has occasionally resulted in multiple requests for extension in relatively short succession.</p> <p>Under the existing rules, the Council must consider whether it has granted an extension of the deadlines in the past, but there is not a strict cap on the number of</p>	<p style="text-align: center;">Major</p>

Oregon EFSC Rulemaking - Chapter 345, Division 27
 (Revising the review processes for Amendments to Energy Facility Site Certificates)

Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0030 Amendment to Extend Construct. Begin & Compl. Deadlines	Amend ReNUMBER	345-027-0085 Request for Amendment to Extend Construction Deadlines		<p>extensions. The Proposed rule change would require the Council to grant a three year extension from the date of the previous deadline, or a two year extension from the date of the amended site certificate issuance in the instance of a contested case, thus providing more surety and clarity for a certificate holder. However, staff also recommends balancing the longer extension by capping the number of available extensions.</p> <p>Construction deadlines are important because the passage of time allows for changes in facts and law, which can cause the underlying rationale for approving a site certificate to become stale and outdated. Under the existing rule, a CH could, in theory, submit an RFA for a deadline extension immediately after the site certificate is approved and executed. Adding provision -0085(1) prevents the Dept. from accepting RFAs for extending construction deadlines earlier than 12 months before the prior deadline. This ensures that certificates for unbuilt facilities will, at a minimum, be reviewed no earlier than 2 years after execution and no later than the original construction deadlines.</p>	Major
		-0085	(1)	Directs CH to submit a pRFA in accordance with 345-027-0060 as early as twelve months prior to the applicable construction deadline.	
		-0085	(2)	Dept. receipt of a pRFA before the applicable deadline suspends expiration of SC.	
		-0085	(3)	Sets extensions of construction deadlines to either 3 years from the previous deadline, or, in the instance a review goes to contested case, 2 years from the date the Council grants the amendment.	
		-0085	(4)	Limits the number of construction deadline extensions Council may approve to 2.	

Oregon EFSC Rulemaking - Chapter 345, Division 27
(Revising the review processes for Amendments to Energy Facility Site Certificates)

Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0050 When an Amendment is Required	Split Amend	345-027-0050 Changes Requiring an Amendment		<p><u>Purpose</u> Rule stating the types of proposed changes to a facility, its owner, the owner of the site certificate holder, or the site certificate itself that require a Request for Amendment (RFA).</p> <p><u>Summary of Proposed Change(s)</u> In response to public input received by the Dept., staff recommends establishing a new rule that clearly lists all the different types of changes requiring an amendment to a site certificate. This is primarily a reorganization of the existing rule. The only substantive change would be to expressly identify a change that would add area to the site boundary as a change requiring a site certificate amendment.</p> <p><u>Rationale</u> The Dept. received input from the RAC indicating there may be confusion on what types of changes to a site certificate require a request for amendment. Listing the types of changes that require an amendment under one distinct rule makes it easier for the reader to understand the instances a site certificate holder must submit a request for amendment (RFA). The substance of the rules that specify what types of facility changes require an amendment would remain substantively similar to the existing rules.</p> <p>However, the recommend rules would expressly identify a change that would add area to the site boundary as a change requiring an amendment. Adding area impacts how the Dept. establishes the analysis area distances used in the Dept.'s review. Adding area also requires the Council to consider, for the area added, whether the potential impacts caused by the facility would comply with all Council standards. Finally, compared to other types of proposed changes, adding area is more likely to impact new property owners. For these reasons, staff also recommends adding a mandatory Pre-Amendment Conference (PAC) step in the review process for changes proposing to add area to a site boundary.</p>	Minor
		-0050	(1)	Transfers in ownership of the facility or ownership of the certificate holder require an amendment.	
		-0050	(2)	Application of later-adopted laws require an amendment.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0050 When an Amendment is Required	Split Amend	-0050	(3)	<p>Extensions of construction deadlines require an amendment.</p> <p>Staff recommends that extensions of the construction deadlines in a site certificate should require a Draft Proposed Order (DPO), comments on the DPO and a public hearing, a PO, and an opportunity for contested case requests on the PO. This is a similar review process to how Council reviews original site certificate applications. This review process is referred to as the standard, “one-size-fits-most” review process.</p>	Minor
		-0050	(4)	<p>Adding area to a site boundary requires an amendment. This is a change from existing rules that do not automatically require an amendment for a site boundary expansion.</p> <p>Staff recommends: adding area to site boundaries should require a Pre-Amendment Conference (PAC), a Draft Proposed Order (DPO), a comment period on the DPO that includes a mandatory public hearing, a PO, and an opportunity for contested case requests on the PO.</p>	
		-0050	(5)	<p>As is the case under the existing rules, an amendment is required if any of “the 3 could” apply to the proposed change.</p> <p>Changes to the design, construction or operation of a facility that:</p> <ol style="list-style-type: none"> 1) could have a significant adverse impact on a resource or interest protected by a Council standard; 2) could impair the CH’s ability to comply with a site certificate condition; or 3) could require a new condition or a change to a condition. <p>The rules have a standard, “one-size-fits-most” review process in addition to the transfer review process. Staff recommends that changes described in -0050(5) require a review process including a Draft Proposed Order (DPO), a comment period on the DPO that includes a mandatory public hearing, a PO, and an opportunity for contested case requests on the PO. The transfer review process would remain a stand-alone review process as it is under the existing rules.</p>	

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Existing Rule	Proposed Action	Proposed	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
n/a	Adopt New	345-027-0051 Review Processes for Requests for Amendment		<p><u>Purpose</u> The purpose of this new rule is to state which type of process the Dept. shall use for its review of each type of proposed change.</p> <p><u>Summary of Proposed Change(s)</u> Staff recommends the Council apply the transfer review process to transfers of ownership of the facility or ownership of the site certificate holder, and a standard, “one-size-fits-most” review process to all other types of proposed changes.</p> <p><u>Rationale</u> Staff recommends this rule to clearly indicate the types of review processes that are applicable to the various types of proposed changes. -0051 describes two review processes: a standard process and a transfer process.</p>	Minor
		-0051	(1)	States that RFA’s to transfer a site certificate are reviewed through the transfer review process described in 345-027-0100. This is consistent with how existing rules function.	
		-0051	(2)	States that RFA’s proposing a change described in -0050(2), (3), (4) and (5) are reviewed through a standard review process. The standard review process consists of rules 345-027-0059, -0060, -0063, -0065, -0067, -0069 and -0071. The standard review process would require a Preliminary Request for Amendment (pRFA), Determination of Completeness (DOC) [where an RFA to apply later adopted law would be considered complete as described in -0090(4)], a Draft Proposed Order (DPO), comments on the DPO and a public hearing, a PO, and an opportunity for contested case (CC) requests on the PO. The Pre-Amendment Conference (PAC) would only be required for an RFA proposing to add area to the site boundary.	
		-0051	(3)	States the Council may act concurrently on any combination of different types of proposed changes submitted in a single request for amendment. If acting on multiple proposed changes in a single RFA, the Dept. will review all proposed changes through the highest review process type applicable to any one of the proposed changes.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0050 When an Amendment is Required	Split Amend	345-027-0053 Changes Exempt from Requiring an Amendment		<p><u>Purpose</u> Rule stating the types of proposed changes to a facility that do not require a Request for Amendment (RFA), so long as the change also results in substantial compliance with the terms and conditions of the site certificate.</p> <p><u>Summary of Proposed Change(s)</u> Reorganization. Existing rule 345-027-0050 lists exemptions under two different sections, (2) and (6), and also includes other provisions such as the existing change request review process and the CH’s requirement to make written determinations when they believe amendments are not required. New rule -0053 would be strictly devoted to listing the exemptions from the requirement to submit an RFA found in existing 0050(2) and -0050(6). Staff relies on the majority of the language used in existing rule 345-027-0050, sections (2) and (6), in recommending this new rule -0053.</p> <p>Separating the transmission line and pipeline components of -0050(2)(d) into two separate sections.</p> <p><u>Rationale</u> Staff recommends creating this new rule to clearly list certain types of changes that, but for being exempt by way of this rule, would require an amendment under 345-027-0050, to make it easier to find all the instances of when a site certificate holder, who otherwise would have to request an amendment, is not required to do so.</p> <p>Separating the transmission and pipeline components of -0050(2)(d) is helpful because related or supporting pipelines carry gaseous and liquid forms of hydrocarbon either to or from and energy facility depending on the type of facility. In contrast, related or supporting transmission lines generally carry electrons from a generation facility to the grid. Because of the different functions of the transmission lines and pipelines the staff recommends creating separate exemptions.</p>	Minor
			-0053 (1)	Language from 345-027-0050(2)(a) without any changes.	
			-0053 (2)	Language from 345-027-0050(2)(b) without any changes.	
			-0053 (3)	Language from 345-027-0050(2)(c) without any changes.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0050 When an Amendment is Required	Split Amend	-0053	(4)	Language from 345-027-0050(2)(d) - Pipeline language separated into its own subsection.	Minor
		-0053	(5)	Language from 345-027-0050(2)(d) - Transmission line language separated into its own subsection.	
		-0053	(6)	Language from 345-027-0050(6) – This exemption is in existing section (6), which is a separate and isolated section from the other exemptions under section (2). Staff recommends combining it with the other exemptions so that all exemptions are included in a single rule.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0050 When an Amendment is Required	Split Amend	345-027-0055 Written Evaluations for Changes Not Requiring Amendment		<p><u>Purpose</u> Rule requiring the CH to complete written evaluations and keep written records of certain changes implemented without an amendment to its site certificate.</p> <p><u>Summary of Proposed Change(s)</u> Minor changes. Otherwise intended to be the functional equivalent of existing rules 345-027-0050(3) and (4) which require the CH to complete written evaluations and keep written records of certain changes implemented without an amendment to its site certificate.</p> <p><u>Rationale</u> The existing written evaluation language could create confusion about what type of proposed change to a facility triggers a requirement for an investigation and written evaluation. The proposed revisions are intended to clarify when a written evaluation is required.</p>	Minor
		-0055	(1)	Language similar to 345-027-0050(3) – Provides the CH must complete a written evaluation if a proposed change involves a change to an element of the facility that is generally included in and governed by the site certificate, even if the CH concludes the change would not require an amendment under 345-027-0050.	
		-0055	(2)	Combination of the language and purpose found in 345-027-0050(3) and (4).	
		-0055	(3)	Combination of the language and purpose found in 345-027-0050(3) and (4).	
		-0055	(4)	New rule provision to remind the CH that the Dept. may take enforcement actions if changes requiring an amendment are implemented without an amendment. While this authority is not stated explicitly under rule existing -0050, existing rule 345-029-0000 already gives Council this enforcement authority.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0050 When an Amendment is Required	Split Amend	345-027-0057 Amendment Determination Request (ADR)		<p><u>Purpose</u> Rule allowing the CH to request a written determination from the Dept. as to whether or not an amendment is required for any change proposed by the CH.</p> <p><u>Summary of Proposed Change(s)</u> Minor changes. Otherwise intended to be the functional equivalent to the existing “change request” review process in 345-027-0050(5), with limited modifications.</p> <p><u>Rationale</u> Similar to the rationale for prior recommendations, staff recommends a stand-alone rule to describe the existing change request provision -0050(5). Proposed changes to language and the organizational structure are to provide clarity.</p>	Minor
		-0057	(1)	Very similar to language in existing 345-027-0050(5). Explains what a CH must submit to the Dept. in its Amendment Determination Request (ADR).	
		-0057	(2)	Very similar to language in existing 345-027-0050(5). Explains that in response to an ADR, the Dept. must issue a written determination as promptly as possible or refer the ADR to the Council.	
		-0057	(3)	Same language as in existing 345-027-0050(5). Allows the CH to request that the Dept.’s determination be referred to the Council for concurrence, modification, or rejection.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
n/a	Adopt New	345-027-0059 Pre-Amendment Conference (PAC)		<p><u>Purpose</u> Rule formally instituting the ability for the CH to conference with the Dept. regarding the proposed changes before submitting its RFA.</p> <p><u>Summary of Proposed Change(s)</u> Staff recommends the CH participate in a mandatory Pre-Amendment Conference (PAC) with the Dept. for proposed changes that add area to the site boundary. For all other proposed changes, the PAC is optional.</p> <p><u>Rationale</u> One reason staff recommends creating this new rule is that it would give the CH an explicit opportunity to meet and converse with the Dept. about whether an amendment is necessary for their proposed change(s), and if an amendment is necessary, to understand the amendment review process and what information must be submitted to the Dept. for its review.</p> <p>Staff recommends a mandatory PAC for proposed changes that add area to the site boundary because the additional area will likely impact how the Dept. establishes the appropriate analysis area distances it will use in its review. Without knowing the appropriate analysis area distances, the CH may not provide the Dept. with all the information necessary for 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 impacts of the proposed change.</p>	Minor
			-0059 (1)	States when the PAC is optional and when it's mandatory.	
			-0059 (2)	Request for a PAC must be in writing and must describe the proposed change.	
			-0059 (3)	Upon receipt of a request, Dept. must schedule the PAC as promptly as possible.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0060 Request to Amend Certificate	Amend	345-027-0060 Preliminary Request for Amendment (pRFA)		<p><u>Purpose</u> Rule requiring the CH to submit a Preliminary Request for Amendment (pRFA), which is intended to closely resemble the Preliminary Application for a Site Certificate (pASC).</p> <p><u>Summary of Proposed Change(s)</u> Staff recommends a new pRFA step to the amendment review process, and recommends the new pRFA be modeled after the pASC requirement of the site certificate application review process.</p> <p><u>Rationale</u> The pRFA is intended to replace the existing rule allowing the CH to submit a draft request under existing rule 345-027-0060(3). Staff suggests that a pRFA step combined with a Determination of Completeness (DOC) step, discussed in detail below, will improve the review process by creating increased certainty for both the certificate holder and the Dept. about the procedural steps to follow when a pRFA is missing information. The ultimate goal is to have a clear review process for getting the Dept. all the information necessary for its review, at the earliest possible stage of the review process. Early and complete information to the Dept. improves the efficiency of the review process.</p>	Minor
		-0060	(1)	Describes what must be included in a pRFA.	
		-0060	(2)	Sets the analysis area distances as the larger of either the distances of the study area(s) defined in 345-001-0000(59) or distances of the analysis area(s) set in the project order for the application for a site certificate.	
		-0060	(3)	Allows CH to incorporate information by referencing previously submitted evidence.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	345-027-0063 Determination of Completeness (DOC) for a Request for Amendment		<p><u>Purpose</u> Rule stating a pRFA is not a complete RFA until the Dept. concludes it is complete and establishing a review process for when additional information is needed.</p> <p><u>Summary of Proposed Change(s)</u> Staff recommends a new Determination of Completeness (DOC) step be added to the amendment review process, and recommends the new DOC step on a pRFA be modeled after the existing DOC step on a pASC in the site certificate application review process. The combination of the pRFA and the DOC steps is intended to enhance a CH’s certainty that they have provided the Dept. with all the required information for their amendment request early in the review process. Identifying the need for additional information early in the review process improves the efficiency of the review and decision process. Similar to the pASC and DOC steps of the application review process, the Proposed pRFA and DOC steps of the amendment review process would formalize the step in the review process where the Dept. must review a request to determine if the certificate holder has included all necessary information in the pRFA. If the Dept. finds that the pRFA is incomplete, the recommend rule includes a Request for Additional Information (RAIs) review process that creates certainty for how additional information is requested and provided and the associated timing. While the Dept. currently reviews amendment requests for completeness and often requests additional information from certificate holders, the existing amendment review process currently lacks rules needed to create certainty for both the Dept. and the certificate holder.</p> <p>Staff’s goal in instituting a 60 day DOC step on the front end of the review process is for it to enable the Dept. to complete its review and issue a DPO within a maximum of 120 days from the date a pRFA is determined a complete RFA.</p> <p>Under the existing amendment review process, the Dept. spends time determining whether an RFA is complete when determining whether the RFA will require extended review. If the RFA is missing information, the RFA goes through an extended review limited to 180 days. 60 days of DOC and 120 days of review, yields the same 180 days currently allotted to the Dept. in its extended review of RFAs under 345-027-0070(1).</p>	Minor

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	345-027-0063 Determination of Completeness (DOC) for a Request for Amendment		<p><u>Rationale</u> Staff recommends modeling this new rule after the similar rule applicable to the review process for original applications for site certificates (<i>see 345-015-0190 for comparison</i>). For the same reasons indicated in the rationale supporting the pRFA step, the DOC step is likely to support a more efficient overall amendment review process and a consistent review process between original site certificate applications and amendments.</p>	Minor
		-0063	(1)	<p>States an RFA is a pRFA until the Dept. determines it is complete and states the Dept. may seek comments from reviewing agencies to determine completeness.</p> <p>The Dept.'s discretion in what agencies it sends the pRFA to differs from existing rule. Under 345-027-0070(1)(a), the Dept. is required to send an RFA to all reviewing agencies within 15 days of the Dept.'s receipt of an RFA.</p> <p>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.</p>	
		-0063	(2)	Gives Dept. 60 days from receipt of pRFA to determine its completeness and states what the Dept. must include in its notice to the CH.	
		-0063	(3)	States that if Dept. does not issue a notice to CH within 60 days, the pRFA is considered a complete RFA.	
		-0063	(4)	States the Dept. may issue Requests for Additional Information (RAIs). The CH may request additional time. If the CH does not submit info by date specified in RAI, the Council may reject the pRFA.	
		-0063	(5)	States the pRFA is a complete RFA when Dept. finds there is enough info for the Council to make findings or impose conditions on all applicable laws and Council standards.	
		-0063	(6)	States that after completeness, the Dept. may require the CH to prepare a consolidated RFA that includes all revisions to the pRFA.	
		-0063	(7)	States that after determining completeness, the Dept. may still request additional info necessary for its review.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	345-027-0065 Draft Proposed Order for a Request for Amendment		<p><u>Purpose</u> Rule instituting a Draft Proposed Order (DPO) step and requiring the Dept. to notify the CH with a date of when it will issue a DPO for a complete RFA. Deadline for DPO issuance is no later than 120 days after the date of the notice.</p> <p><u>Summary of Proposed Change(s)</u> Staff recommends adding a new DPO step to the amendment review process and recommends the new DPO step be modeled after the DPO requirement of the site certificate application review process (<i>see 345-015-0210 for comparison</i>). The new review process being proposed would take one round of comments on the DPO. The existing review process takes two rounds of comments, one round of comments on the RFA and a second round of comments on the PO.</p> <p><u>Rationale</u> Issuing and taking comment on a DPO (opposed to taking comments on an RFA and a PO in the existing amendment review process) allows for more meaningful participation by the public. In the proposed review process, people will be commenting on a DPO containing the findings of fact and conclusions of law made by the Dept. Compared to the RFA, a DPO provides more information to people and allows them to provide comments regarding the Dept.'s findings of fact, conclusions of law and proposed recommendations to the Council. Compared to taking comment on the PO, taking comments on the DPO allows people to comment on the Dept.'s findings of fact, conclusions of law and proposed recommendation to the Council earlier in the review process. This gives the Dept. the opportunity to issue a PO that reflects any edits to the DPO findings of fact, conclusions of law and recommendations to the Council that the Dept. may choose to make in response to comments received on the DPO.</p> <p>Instituting a DPO phase also allows the Dept. to include a “raise it or waive it” feature that limits those who are eligible to request a contested case later in the review process, as is currently the case with the original site certificate review process. A person must have commented on the record of the DPO in order to be eligible to request a contested case on the subsequent proposed order. This is not the case with the existing amendment review process. The DPO and the “raise it or waive it” feature allow the amendment</p>	Major

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345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	345-027-0065 Draft Proposed Order for a Request for Amendment		review process to operate more efficiently and align with the original site certificate review process. Instituting a DPO and taking one round of comments on the DPO balances two opposing needs: what staff sees as a need to increase the opportunity for more meaningful public participation in the amendment review process, and what staff sees as a need to increase the efficiency of the amendment review process.	Major
		-0065	(1)	Within 15 days of determining an RFA is complete, Dept. must issue notice to CH. Notice must include a date, not more than 120 days from the date of notice, of when the Dept. will issue its DPO. Dept. also notifies public of its receipt of a complete RFA by posting an announcement to Dept. website.	
		-0065	(2)	No later than the date specified in the notice, the Dept. shall issue a DPO.	

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345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	345-027-0067 Public Comment and Hearing on the Draft Proposed Order for a Request for Amendment		<p><u>Purpose</u> Institutes a mandatory public hearing on the Draft Proposed Order (DPO). This is intended to function similarly as to how the DPO hearing functions in the review process for an initial application for a site certificate (<i>see 345-015-0220 for comparison</i>).</p> <p><u>Summary of Proposed Change(s)</u> Staff recommends holding a mandatory public hearing as part of the proposed new review process.</p> <p><u>Rationale</u> The existing amendment review process rule 345-027-0070(3) already allows the Dept. to hold one or more public meetings during its review of an RFA. However, the public meeting is not mandatory and does not allow an opportunity for comment on a proposed order that includes the Dept.'s proposed findings of fact and conclusions of law. Staff sees value in the opportunity for the public to orally voice its comments on a DPO. Staff sees additional value in giving the public this opportunity to provide oral comments at a mandatory public hearing in front of the Council. This would also align the amendment review process with the original site certificate application review process.</p>	Major	
			-0067	(1)		States that the Council shall conduct a public hearing on the RFA.
			-0067	(2)		States that when the DPO is issued, the Dept. must send notice of the complete RFA, DPO and Public Hearing.
			-0067	(3)		Describes what must be in the Sec. (2) notice. Replicates existing OAR 345-015-0220(3).
			-0067	(4)		States that during the hearing, the Dept. shall explain the amendment review process and how the public may participate in the process. Replicates existing OAR 345-015-0220(4).
			-0067	(5)		States what the presiding officer of the public hearing must state at the commencement of the public hearing. Replicates OAR 345-015-0220(5).
			-0067	(6)		States that persons may comment at the hearing without administration of an oath and all comments are recorded and part of the decision record. Replicates OAR 345-015-0220(6).
			-0067	(7)		States that the Council must review the DPO, must consider all comments received on the DPO, and may provide comments to the Dept. regarding the DPO. (<i>see 345-015-0230 for comparison</i>).

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345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	345-027-0069 Proposed Order, Requests for Contested Case and Council’s Final Decision		<p><u>Rationale</u> Apart from the new “raise it or waive it” threshold applicable to CC requests (requiring a person to either raise an issue on the record of the public hearing, or waive their right to participate in any future CC proceedings), these rules are largely analogous to the existing rules found in OAR 345-027-0070(4) through (10).</p> <p>Implementing the “raise it or waive it” threshold to the CC request review process adds clarity and certainty to the evaluation the Council will perform when determining the issues and the participating parties in any contested case proceeding on an RFA. Without the “raise it or waive it” threshold, any person could request a contested case even if they did not participate in the hearing and provide the certificate holder and the Dept. an opportunity to consider and address the comment or concern. Adding “raise it or waive it” will again be consistent with the original site certificate review processes.</p> <p>The addition of a mandatory public hearing as part of the DPO comment period increases the opportunity for public participation in the review process by giving the public the opportunity, in most cases, to stand before the Council and voice their issues directly to Councilmembers.</p> <p>With the additional info, the additional opportunity for meaningful public input, and the addition of the opportunity to speak directly to Councilmembers about their issues, subsequently limiting the pool of people who may request to participate on a CC to those who commented on the record of the DPO aims to strike a balance between increased public participation and increased efficiency.</p>	Major
		-0069	(1)	States the Dept. must issue a PO no later than 30 days after the close of the record of the public hearing on the DPO and that the Dept. must consider all timely comments received, including any comments from the Council.	
		-0069	(2)	States the Dept. must issue notice of the PO and to whom notice must be sent.	
		-0069	(3)	States what must be included in the notice of the PO.	

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345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	-0069	(4)	States that on the same date the Dept. issues notice of the PO that the Dept. must issue notice of the opportunity to request a contested case to the certificate holder and all those who commented on the record of the DPO.	Major
		-0069	(5)	Institutes a “raise it or waive it” threshold requirement applicable to contested case requests. Only those persons who comment on the record of the public hearing may request a contested case proceeding, and the issues any party to a contested case may participate on are limited to those issues that party properly raised in its contested case request that the Council found sufficient to justify the contested case, except that the certificate holder may participate on any issue the Council found sufficient to justify a contested case proceeding. The analog of this language for the site certificate application review process is found in ORS 469.370(5) and 345-015-0016(3).	
		-0069	(6)	States that contested case requests must be submitted in writing and received by the Dept. within 30 days from the notice of the opportunity to request a contested case. Also states what must be included in a CC request which is a combination of information required by existing rules 345-027-0070(6) and 345-015-0016(5)(a) [which refers to the requirements of 137-003-0005(3)].	
		-0069	(7)	States that before considering whether issues raised in a contested case request justify a contested case proceeding, the Council must determine if issues were properly raised.	
		-0069	(7)(a)	States that properly raised issues are those that were raised on the record of the public hearing with sufficient specificity to afford the Council, the Dept. and the CH an adequate opportunity to respond.	
		-0069	(7)(b)	States that properly raised issues could be raised if the Dept. did not follow the requirements of 345-027-0067.	
		-0069	(7)(c)	States that properly raised issues could be raised if the action proposed in the PO differs materially from the action proposed in the DPO.	
		-0069	(8)	States that the Council must deny contested case requests from persons who did not comment on the record of the hearing or failed to properly raise an issue.	

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Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	-0069	(9)	<p>This section is intended to resemble the functionality of existing rule 345-027-0070(7). States that after identifying properly raised issues, the Council must determine whether any of those issues justify a contested case proceeding. Also states the test the Council applies for determining whether a contested case proceeding is justified: “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 and Council standards included in chapter 345 divisions 22, 23 and 24.” This is the same test the Council applies in the existing amendment review process, with language added to clarify that the laws and Council standards applicable to the Council’s review of an RFA are those found in Ch. 345, Div. 22, 23 and 24.</p> <p>The other language in existing section -0070(7), “If the Council finds the request would not affect the Council’s determination if the alleged facts were found to be true but that those facts could affect a site certificate condition, the Council may deny the request and may adopt appropriate conditions” effectively gives the same authority to the Council as that which is given under existing rule 345-070-0070(8)(b). Therefore, this authority and language from existing -0070(7) is proposed to be removed from rule and the authority and language of existing -0070(8)(b) is proposed to be retained and located in proposed section -0069(10)(b).</p>	Major
			(10)	States the actions the Council must take when determining if a properly raised issues justifies a contested case proceeding.	
		-0069	(10)(a)	<p>If Council finds the request identifies an issue that justifies a CC, the Council must conduct a contested case and the Council must identify the parties and the issues each party to the contested case may participate on.</p> <p>States that parties are limited to those who the Council found properly raised an issue in their CC request that the Council found sufficient to justify a CC, and that the CH is an automatic party to any CC.</p> <p>States the issues parties may participate on in the CC are limited to those issues that party properly raised in its CC request that the Council found sufficient to justify a CC, except the CH may participate on any issue the Council finds sufficient to justify a CC.</p>	

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Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	-0069	(10)(b)	If the Council finds a CC request identifies issues that an amendment to the PO would settle in a manner satisfactory to the Council, the Council may deny the CC request to those issues and direct the Dept. to amend and re-notice the PO. There is then a new opportunity for requests for contested case on the amended PO, where requests are limited to the PO changes.	Major
		-0069	(10)(c)	Same language as existing OAR 345-027-0070(8)(c): If the Council finds a CC request does not identify a properly raised issue that justifies a contested case proceeding, the Council shall deny the request. The Council shall then adopt, modify or reject the PO based on the considerations described in OAR 345-027-0071. In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council approves the amendment request, the Council shall issue an amended site certificate effective upon execution by the Chair and the CH.	
		-0069	(11)	States that if there is no request for a CC the Council may adopt, modify or reject the PO based on the considerations described in OAR 345-027-0071. Same language as existing OAR 345-027-0070(9).	
		-0069	(12)	States that judicial review of the Council’s final order shall be as provided by ORS 469.403.	

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Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0070(10)	Adopt New	345-027-0071 Scope of Council's Review		<p><u>Purpose</u> Move the existing language of 345-027-0070(10) to become a stand-alone rule and make changes for clarity and consistency.</p> <p><u>Summary of Proposed Change(s)</u> The proposed changes do not substantially deviate from what is already required by rule OAR 345-027-0070(10). In the instances staff has proposed changes, the changes are for clarity and consistency.</p> <p><u>Rationale</u> The content of OAR 345-027-0070(10) is an important provision of the amendment review process. Therefore, staff sees value in moving the content of OAR 345-027-0070(10) into its own stand-alone rule to make it more visible and conspicuous.</p> <p>Staff recommends removal of the existing language under 345-027-0070(10)(b)(A) and (B) to comport with other changes staff is recommending under 345-027-0085.</p>	Minor
		-0071	(1)	States the Council must apply the applicable laws and Council standards required under sections (2) and in effect on the dates described in section (3).	
		-0071	(2)	States what laws and Council standards are applicable for 4 types of amendments:	
		-0071	(2)(a)	For amendments proposing to add new area to the site boundary, the Council must find the portion of the facility within the area added to the site complies with all laws and Council standards applicable to an original site certificate.	

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Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0070(10)	Adopt New	-0071	(2)(b)	For RFAs to extend construction deadlines, after considering any changes in facts or law since the date the current site certificate was executed, the Council must find the facility complies with all laws and Council standards applicable to an original site certificate application.	Minor
				There is also an exception for RFAs proposing to extend construction deadlines, where the Council need not find compliance with an applicable law or Council standard if the Council finds all of the following: the CH has spent more than 50% of budgeted costs; CH in ability to complete construction by the deadline was the result of unforeseen circumstances outside the CH’s control; the applicable law or standard if applied would result in an unreasonable financial burden on the CH; and the Council does not need to apply the standard to avoid significant threat to the public health, safety or environment. This language currently exists in rule and is not proposed to be changed.	
		-0071	(2)(c)	For any amendment not described above, the facility with the proposed changes, complies with the applicable laws or Council standards that could be implicated by the proposed changes.	
		-0071	(2)(d)	For all amendments, the amount of the bond of letter of credit is adequate.	
		-0071	(3)	States the effective date for those applicable laws and Council standards that the Council is to apply when making the findings necessary to grant an amendment.	
		-0071	(3)(a)	For the applicable substantive criteria of the Council’s land use standard, OAR 345-022-0030, the criteria in effect on the date the CH submitted the RFA.	
-0071	(3)(b)	For all other applicable laws and Council standards, the criteria in effect on the date the Council issues the amended site certificate.			

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Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0080 Review of a Request by a Certificate Holder for Expedited Amendment	Repeal	n/a	n/a	<p><u>Rational</u> Based on the infrequent use of the existing expedited amendment review process staff recommends this rule be repealed.</p>	Major

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Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
<p>345-027-0090 Request by Any Person for Amendment to Apply Subsequent Laws or Rules</p>	<p style="text-align: center;">Amend</p>	<p>345-027-0090 Request for Amendment by Any Person to Apply Later-Adopted Laws</p>		<p><u>Purpose</u> Purpose of the proposed changes is to provide clarity, certainty and consistency to the rules describing Council’s review of RFA’s to apply later-adopted laws that will prevent significant threats to the public health or safety or to the environment.</p> <p><u>Summary of Proposed Change(s)</u> While this rule has not been used, staff believes the proposed revisions are important.</p> <p>Section (1) language is proposed to clearly indicate early on in the rule that a precondition to Council approval of any RFA seeking to apply later-adopted laws is that failure to apply the law(s) results in a significant threat to the public health or safety or to the environment.</p> <p>Section (2) changes are proposed to reduce the verbiage necessary to state what must be submitted to the Dept. in an RFA under this rule.</p> <p>Section (3) combines the concepts in existing sections (3) and subsection (4)(a).</p> <p>Existing Section (4)(b) is proposed to be removed.</p> <p>Subsections (5)(a),(b), and (c) are being proposed to include the language of existing rule subsections (4)(c),(d), and (e).</p> <p>Section (4) is proposed so the Dept. can review an RFA under this rule through the review process described in section (5) that references rules -0065, -0067, -0069 and -0071.</p> <p><u>Rationale</u> Existing sections (1) and (2) were modified, respectively, for clarity and conciseness. Existing subsection (4)(b) was removed because the existing review process refers to the “extended” (not expedited, that is a typo) review process described in existing rule 345-027-0070(2). Not only is there no expedited review process, but the proposed rules eliminate the extended review process completely. Because the existing rules require an</p>	<p style="text-align: center;">Major</p>

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Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0090 Request by Any Person for Amendment to Apply Subsequent Laws or Rules	Amend	345-027-0090 Request for Amendment by Any Person to Apply Later-Adopted Laws		RFA for later-adopted laws to be reviewed according to existing rule 345-027-0070, and because -0065, -0067, -0069, and -0071 are proposed to replace existing -0070, proposed sections (4) and (5) are necessary to link the review process for an RFA to apply later-adopted laws to the review process described by rules -0065, -0067, -0069 and -0071.	Major
		-0090	(1)	Sets scope of the rule, which is to allow for any person to request an amendment to apply laws adopted after the date the site certificate was executed.	
		-0090	(2)	Described what must be submitted to the Dept. in a request for amendment to apply later-adopted laws.	
		-0090	(3)	Dept. must send a copy of any request under this rule to the CH and must give the CH a deadline to submit any response to the Dept. Responses must state whether the CH agrees that there is a clear showing of a significant threat to the public health, safety or the environment that requires application of the later-adopted law.	
		-0090	(4)	Explains when the Dept. considers a request under this rule complete for purposes of complying with OAR 345-027-0065.	
		-0090	(5)	Explains the Dept.'s review process for requests for amendment under this rule. Requests for contested case may come from anyone who commented on the record of the DPO. To order a contested case, the Council must find that an issue identified in a contested case request raises a significant issue of fact or law, except that if a CH requests a CC on a PO that recommends approval or modified approval of a request for amendment under this rule then the Council must conduct a CC limited to the issues stated by the CH. The purpose of this change is that in the context of an amendment to a site certificate for a later adopted law, the certificate holder would be uniquely affected and should have an opportunity, if requested, to address the proposed changes through a contested case proceeding.	

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Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0100 Transfer of a Site Certificate	Amend	Request for Amendment to Transfer Ownership, Possession or Control of the Facility or the Certificate Holder		<p><u>Purpose</u> Clarify points that were previously unclear and conform the transfer rules to the changes staff is recommending in its newly proposed rules.</p> <p><u>Summary of Proposed Change(s)</u> The Dept. is recommending changes to existing sections (1), (3), (7), and (12) of the existing rule. Changes to section (1) add clarity in defining what types of transactions require a transfer RFA. Changes to section (3) add language that clearly states that any transaction that would require the transfer of a site certificate does not terminate the transferor’s duties under the site certificate until a transfer RFA is approved by the Council. Changes to section (7) change the name of the “informational hearing” to a “transfer hearing.” Changes to section (12) update the references to the types of review processes used when transfer RFAs are submitted to the Council concurrently with other types of RFAs.</p> <p><u>Rationale</u> These are intended to be minor changes that clarify points that were previously unclear and conform the transfer rules to the other changes staff is recommending under other rules.</p>	Minor
			-0100 (1)	Defines when an RFA to transfer a site certificate is necessary – when there’s a change in the ownership, possession, or control of the facility, or the certificate holder. Also replaces the term “transferee” with “new owner” throughout the rule. Both these changes are commensurate with the mandatory condition language in existing OAR 345-027-0020(15). Both changes are intended to provide additional clarity on the type of ownership and organizational changes that trigger an amendment.	
			-0100 (2)	States that a CH must notify the Dept. when the CH has knowledge that a transaction requiring a transfer is or may be pending. Also described what must be in the notice.	
			-0100 (3)	States the a completed transaction that would require a transfer under this rule does not terminate the transferor’s duties and obligations under the site certificate until the Council approves a transfer and issues an amended site certificate.	
			-0100 (4)	States what the CH must submit to the Dept. in its RFA for a transfer.	
			-0100 (5)	States the Dept. may require the new owner to submit a written statement from the current CH verifying the new owner’s right to possession of control of the site or facility.	

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Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0100 Transfer of a Site Certificate	Amend	-0100	(6)	States the Dept. must issue notice of an RFA for a transfer within 15 days after receiving one, states who it must issue notice to, and states what must be included in the notice.	Minor
		-0100	(7)	States the Council must hold a transfer hearing during a Council meeting and provide notice of the hearing on the meeting agenda to be sent by mail or email to the Council’s general mailing list in advance of the meeting.	
		-0100	(8)	States the findings the Council must make to issue an order approving the RFA for a transfer.	
		-0100	(9)	States that except for what is described in section (12), the Council shall not otherwise change the terms and conditions of the site certificate in an order approving the transfer.	
		-0100	(10)	States the Council shall issue an amended site certificate naming the new owner as the new certificate holder or as the new owner of the certificate holder upon issuing an order approving the transfer.	
		-0100	(11)	States the Council may issue a temporary amended site certificate under special circumstances that justify an emergency.	

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Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0110 Termination of a Site Certificate	No Change	n/a	n/a	n/a	n/a
345-027-0210 General	No Change	n/a	n/a	n/a	n/a
345-027-0220 Request for Approval	No Change	n/a	n/a	n/a	n/a
345-027-0230 Review of a Request for Approval	No Change	n/a	n/a	n/a	n/a
345-027-0240 Conditions	No Change	n/a	n/a	n/a	n/a

1 **DIVISION 27**

2 **EXPIRATION, AMENDMENT AND TERMINATION OF SITE CERTIFICATES, AND DEPARTMENT OF**
 3 **ENERGY APPROVAL OF GAS STORAGE TESTING PIPELINES**

4
 5 **345-027-0011**

6 **Applicability**

7 The rules in this division apply to all facilities under the Council's jurisdiction except those
 8 facilities described in ORS 469.410(1), including the Trojan energy facility, and except that rules
 9 345-027-0050, -0060, -0070, -0080, -0090 and -0100 that were in effect prior to Month XX,
 10 2017 apply to proposed changes that have been included in requests for amendment to site
 11 certificates and change requests that have been received by the Department prior to Month XX,
 12 2017.

13
 14 **345-027-000013**

15 **Certificate Expiration**

16 If the certificate holder does not begin construction of the facility by the construction beginning
 17 date specified in the site certificate or amended site certificate, the site certificate expires on
 18 the construction beginning date specified, unless expiration of the site certificate is suspended
 19 pending final action by the Council on a request for amendment to a site certificate pursuant to
 20 OAR 345-027-0085(2).

21
 22 **345-027-0050**

23 **Changes Requiring an Amendment**

24 Except for changes allowed under OAR 345-027-0053 of this rule, an amendment to a site
 25 certificate is required to:

- 26 (1) Transfer ownership of the facility or the certificate holder as described in OAR 345-027-
 27 0100;
 28 (2) Apply later-adopted law(s) as described in OAR 345-027-0090;
 29 (3) Extend the construction beginning or completion deadline as described in OAR 345-027-
 30 0085;
 31 (4) Add area to the site boundary; and
 32 (5) Design, construct or operate a facility in a manner different from the description in the site
 33 certificate if the proposed change:
 34 (a) Could result in a significant adverse impact that the Council has not addressed in an
 35 earlier order and the impact affects a resource or interest protected by a Council
 36 standard;
 37 (b) Could impair the certificate holder's ability to comply with a site certificate condition; or
 38 (c) Could require a new condition or a change to a condition in the site certificate.

39
 40 **345-027-0051**

41 **Requests for Amendment Process**

- 42 (1) The transfer process, described in 345-027-0100, shall apply to the Council's review of a
 43 request for amendment to a site certificate to transfer a site certificate.

- 1 (2) The standard process, consisting of rules 345-027-0059, -0060, -0063, -0065, -0067, -0069
 2 and -0071, shall apply to the Council's review of a request for amendment proposing a
 3 change described in 345-027-0050(2), (3), (4) and (5).
- 4 (3) The Council may act concurrently on any combination of proposed changes included in a
 5 request for amendment. Concurrent proposed changes are subject to the substantive
 6 requirements applicable to each respective proposed change and the Council shall review
 7 all proposed changes through the process with the more procedural steps applicable to any
 8 one of the proposed changes.

9
 10 **345-027-0053**

11 **Changes Exempt from Requiring an Amendment**

12 An amendment to a site certificate is not required if the proposed change in the design,
 13 construction or operation of a facility is in substantial compliance with the terms and conditions
 14 of the site certificate, and is a change:

- 15 (1) To an electrical generation facility that would increase the electrical generating capacity and
 16 would not increase the number of electric generators at the site, change fuel type, increase
 17 fuel consumption by more than 10 percent or enlarge the facility site;
- 18 (2) To the number or location of pipelines for a surface facility related to an underground gas
 19 storage reservoir that would not result in the facility exceeding permitted daily throughput
 20 or a change to the site boundary;
- 21 (3) To the number, size or location of pipelines for a geothermal energy facility that would not
 22 result in a change to the site boundary;
- 23 (4) To a pipeline that is a related or supporting facility that delivers natural gas to the energy
 24 facility if the change would extend or modify the pipeline or expand the right-of-way, when
 25 the change is exclusively to serve gas users other than the energy facility;
- 26 (5) To a transmission line that is a related or supporting facility if the change would extend or
 27 modify the transmission line or expand the right-of-way, when the change is exclusively to
 28 serve the transmission needs of a separate energy facility or energy user; or
- 29 (6) To construct a pipeline less than 16 inches in diameter and less than five miles in length to
 30 test or maintain an underground gas storage reservoir. If the proposed pipeline would
 31 connect to a surface facility related to an underground gas storage reservoir for which the
 32 Council has issued a site certificate or to a gas pipeline for which the Council has issued a
 33 site certificate, the certificate holder must obtain, prior to construction, the approval of the
 34 Department of Energy for the construction, operation and retirement of the proposed
 35 pipeline. To obtain Department approval, the certificate holder must submit a request as
 36 described in OAR 345-027-0210 through OAR 345-027-0240.

37
 38 **345-027-0055**

39 **Written Evaluations for Changes Not Requiring Amendment**

- 40 (1) If the certificate holder concludes that a proposed change to the facility does not require an
 41 amendment to the site certificate, the certificate holder must complete a written evaluation
 42 if the change:
- 43 (a) Could be included in and governed by the site certificate, but the certificate holder has
 44 concluded the change is not described in 345-027-0050; or

- 1 (b) Is exempt from requiring an amendment under 345-027-0053.
- 2 (2) The written evaluation must explain why an amendment is not required, must be
3 completed before implementing any change, and must be included in the next semiannual
4 construction progress report or the Facility Modification Report required under 345-026-
5 0080. The written evaluation must be retained for the life of the facility.
- 6 (3) The Department of Energy may, at any time, inspect the changes made to the facility and
7 may inspect the certificate holder's written evaluation concluding that the change did not
8 require an amendment.
- 9 (4) When the certificate holder implements a change without an amendment, the Department
10 may initiate an enforcement action as described in Division 29 if the Department
11 determines the change required an amendment to the site certificate.

12 **345-027-0057**

13 **Amendment Determination Request**

- 14 (1) The certificate holder may request a written determination of whether an amendment to
15 the site certificate is required by OAR 345-027-0050 by submitting the following information
16 in a written request to the Department of Energy:
17 (a) A narrative description of the proposed change(s);
18 (b) Maps and/or geospatial data layers representing the effects and/or location of the
19 proposed change;
20 (c) The certificate holder's evaluation of whether the proposed change requires an
21 amendment as described in OAR 345-027-0050 or OAR 345-027-0053; and
22 (d) Any additional information the certificate holder believes will assist the Department's
23 evaluation.
- 24 (2) Upon receiving a request for a written determination described in section (1), the
25 Department shall, as promptly as possible, issue a written determination indicating whether
26 the proposed change requires an amendment or refer the request to the Council for a
27 written Council determination.
- 28 (3) At the request of the certificate holder, the Department must refer its determination to the
29 Council for concurrence, modification or rejection.

30 **345-027-0059**

31 **Pre-Amendment Conference**

- 32 (1) Prior to submitting a preliminary request for amendment to the site certificate as described
33 in OAR 345-027-0060, the certificate holder may request a pre-amendment conference
34 with the Department of Energy to discuss the scope, timing, and applicable laws and Council
35 standards associated with the request for amendment. If the certificate holder is requesting
36 an amendment to add area to the site boundary, the certificate holder must request a pre-
37 amendment conference before submitting a preliminary request for amendment.
- 38 (2) A pre-amendment conference request must be in writing and must include a description of
39 the proposed change and, if applicable, maps or geospatial data layers representing the
40 location of the proposed change.
- 41 (3) Upon receipt of a request as described in section (1), the Department must, as promptly as
42 possible, set a date and time for a pre-amendment conference.
- 43
44

1 **345-027-0060**

2 **Preliminary Request for Amendment**

- 3 (1) To request an amendment to the site certificate required by OAR 345-027-0050(3) – (5), the
 4 certificate holder shall submit a written preliminary request for amendment to the
 5 Department of Energy that includes the following:
 6 (a) The name of the facility, the name and mailing address of the certificate holder, and the
 7 name, mailing address, email address and phone number of the individual responsible
 8 for submitting the request.
 9 (b) A detailed description of the proposed change, including:
 10 (A) a description of how the proposed change affects the facility,
 11 (B) a description of how the proposed change affects those resources or interests
 12 protected by applicable laws and Council standards, and
 13 (C) the specific location of the proposed change, and any updated maps and/or
 14 geospatial data layers relevant to the proposed change.
 15 (c) References to any specific Division 21 information that may be required for the
 16 Department to make its findings.
 17 (d) The specific language of the site certificate, including conditions, that the certificate
 18 holder proposes to change, add or delete through the amendment.
 19 (e) A list of the Council standards and all other laws - including statutes, rules and
 20 ordinances - applicable to the proposed change, and an analysis of whether the facility,
 21 with the proposed change, would comply with those applicable laws and Council
 22 standards. For the purpose of this rule, a law or Council standard is “applicable” if the
 23 Council would apply or consider the law or Council standard under OAR 345-027-
 24 0071(2).
 25 (f) An updated list of the owners of property located within or adjacent to the site of the
 26 facility, as described in OAR 345-021-0010(1)(f).
 27 (2) For any Council standard that requires evaluation of impacts within an analysis area, the
 28 analysis area shall be the larger of either the study area(s) as defined in OAR 345-001-
 29 0000(59) or the analysis area(s) described in the project order for the application for site
 30 certificate, unless otherwise approved in writing by the Department following a pre-
 31 amendment conference.
 32 (3) The certificate holder may incorporate, by specific reference, evidence previously submitted
 33 to the Department in the application for site certificate or previous request for amendment,
 34 or evidence that is otherwise included in the Department’s record on the facility.

35
 36 **345-027-0063**

37 **Determination of Completeness for a Request for Amendment**

- 38 (1) Until the Department of Energy determines the request for amendment to the site
 39 certificate is complete, it is a preliminary request for amendment. After receiving a
 40 preliminary request for amendment, the Department may seek comments from reviewing
 41 agencies to determine whether that request is complete.
 42 (2) Unless the certificate holder agrees to additional time, within 60 days after receipt of a
 43 preliminary request for amendment, the Department shall notify the certificate holder
 44 whether the request for amendment is complete. In the notification, the Department shall:

- 1 (a) State that the request for amendment is complete; or
2 (b) State that the request for amendment is incomplete and:
3 (A) Describe any additional information needed to complete the request for
4 amendment to the extent known to the Department at the time of the notification,
5 including identification of applicable laws and Council standards not addressed in
6 the preliminary request for amendment,
7 (B) Ask the certificate holder to submit the additional information by the due dates
8 described in section (4), and
9 (C) Estimate the additional time the Department will need to make a determination of
10 completeness following the submittal of the additional information by the certificate
11 holder.
- 12 (3) If the Department does not notify the certificate holder as described in section (2), the
13 request for amendment is deemed complete 60 days after receipt of a preliminary request
14 for amendment. Otherwise, the request for amendment is complete as determined under
15 section (5).
- 16 (4) The Department may specify a date by which the certificate holder must submit additional
17 information needed to complete the request for amendment. If follow-up requests for
18 additional information are needed, the Department may specify dates by which the
19 certificate holder must submit the information. At the request of the certificate holder, the
20 Department may allow additional time for submission of the information. If the certificate
21 holder does not submit the information by the deadline specified by the Department,
22 including any allowed extension, the Council may reject the preliminary request for
23 amendment. The rejection of a preliminary request for amendment is subject to appeal
24 under ORS 469.403(3).
- 25 (5) A request for amendment is complete when the Department finds that the certificate holder
26 has submitted information adequate for the Council to make findings or impose conditions
27 on all applicable laws and Council standards. The Department shall notify the certificate
28 holder when the Department finds that the request for amendment is complete.
- 29 (6) After receiving notification from the Department that the preliminary request for
30 amendment is complete, the Department may require the certificate holder to prepare a
31 consolidated request for amendment that includes all revisions to the preliminary request
32 for amendment and all additional information requested by the Department before the
33 determination of completeness. Upon a request by the Department, the certificate holder
34 shall submit paper and non-copy-protected electronic copies of the consolidated request
35 for amendment to the Department as specified by the Department.
- 36 (7) If, after a determination that a request for amendment is complete, the Department
37 identifies a need for additional information during its review of the request for amendment,
38 the Department may request additional information from the certificate holder.
39
40

1 **345-027-0065**

2 **Draft Proposed Order for a Request for Amendment**

- 3 (1) Within 15 days after a request for amendment to the site certificate described in OAR 345-
 4 027-0050(3) – (5) or a request for amendment to apply later-adopted laws described in OAR
 5 345-027-0090 is determined to be complete, the Department of Energy shall:
 6 (a) Send notice to the certificate holder specifying a date for issuance of a draft proposed
 7 order that is no later than 120 days after the date of the notice.
 8 (b) Post an announcement on the Department’s website to notify the public that a complete
 9 request for amendment has been received. The announcement shall include:
 10 (A) A copy of the complete request for amendment;
 11 (B) The date the draft proposed order will be issued, as specified in the notice required
 12 by subsection (1)(a); and
 13 (C) A statement that the public comment period begins upon issuance of the draft
 14 proposed order.
 15 (2) No later than the date specified in the notice required by subsection (1)(a), the Department
 16 shall issue a draft proposed order recommending approval, modification, or denial of the
 17 requested amendment. The Department may issue the draft proposed order at a later date,
 18 but the Department shall, no later than the date the Department has specified in the notice
 19 required by subsection (1)(a), notify the certificate holder in writing of the reasons for the
 20 delay. The draft proposed order may include, but is not limited to draft proposed findings of
 21 fact, conclusions of law, and conditions concerning the facility’s compliance with applicable
 22 laws and Council Standards.

23
 24 **345-027-0067**

25 **Public Comment and Hearing on the Draft Proposed Order for a Request for Amendment**

- 26 (1) After issuance of the draft proposed order as described in OAR 345-027-0065, the Council
 27 shall conduct a public hearing on the request for amendment to the site certificate in the
 28 vicinity of the facility. The public hearing must be held at least 20 days after the draft
 29 proposed order is issued. The public hearing is not a contested case hearing.
 30 (2) Concurrent with the issuance of the draft proposed order as described in OAR 345-027-
 31 0065, the Department of Energy shall:
 32 (a) Send the notice described in section (3) of this rule by mail or email to:
 33 (A) Persons on the Council’s general mailing list as defined in OAR 345-011-0020;
 34 (B) Persons on any special mailing list established for the facility;
 35 (C) The reviewing agencies as defined in OAR 345-001-0010(52); and
 36 (D) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F,
 37 (b) Post the complete request for amendment, draft proposed order, and the notice of the
 38 draft proposed order and public hearing on the Department website, and
 39 (c) Make physical copies of the draft proposed order available to the public for inspection.
 40 (3) Notice of the complete request for amendment, draft proposed order and public hearing
 41 shall include:
 42 (a) A description of the facility and the facility’s general location.
 43 (b) The date, time and location of the public hearing described in this rule.

- 1 (c) The name, address, email address and telephone number of the Department
2 representative to contact for additional information.
- 3 (d) Addresses of the physical location(s) and the website where the public may review
4 copies of the complete request for amendment and draft proposed order.
- 5 (e) The deadline for the public to submit written comments to be included in the record of
6 the public hearing and how such comments should be submitted.
- 7 (f) A statement that:
- 8 (A) A complete request for amendment has been received and reviewed by the
9 Department.
- 10 (B) The Department has issued a draft proposed order.
- 11 (C) To raise an issue on the record of the public hearing, a person must raise the issue in
12 person at the public hearing or in a written comment submitted after the date of the
13 notice of the public hearing and received by the Department before the close of the
14 record of the public hearing.
- 15 (D) A person's failure to raise an issue in person or in writing on the record of the public
16 hearing precludes the Council's consideration of whether to grant that person's
17 subsequent contested case request.
- 18 (E) Failure to raise an issue with sufficient specificity to afford the Council, the
19 Department, and the certificate holder an opportunity to respond to the issue
20 precludes the Council from considering whether that issue justifies a contested case
21 proceeding.
- 22 (F) To raise an issue with sufficient specificity, a person must present facts, on the
23 record of the public hearing, that support the person's position on the issue.
- 24 (G) The Council will not accept or consider any further public comment on the request
25 for amendment or on the draft proposed order after the close of the record of the
26 public hearing.
- 27 (4) During the public hearing, the Department shall explain the amendment process, including
28 the means and opportunities for the general public to participate in the process. The
29 Department may provide this explanation by a written handout.
- 30 (5) At the commencement of the public hearing, the presiding officer shall read aloud the
31 following:
- 32 (a) A person who intends to request a contested case on the proposed order for a site
33 certificate amendment must comment in person or in writing on the record of the public
34 hearing.
- 35 (b) A person who intends to raise an issue that may be the basis for granting a contested
36 case proceeding must raise that issue on the record of the public hearing with sufficient
37 specificity to afford the Council, the department and the certificate holder an adequate
38 opportunity to respond to the issue. To raise an issue with sufficient specificity, a person
39 must present facts, on the record of the public hearing, that support the person's
40 position on the issue.
- 41 (6) At the public hearing, any person may present information regarding the pending request
42 for amendment without administration of an oath. The presiding officer shall record all
43 presentations made during the public hearing. The presentations are part of the decision
44 record for the request for amendment.

- 1 (7) Following the close of the record of the public hearing on the draft proposed order, the
 2 Council shall review the draft proposed order, shall consider all comments received on the
 3 record of the hearing, and may provide comments to the Department regarding the draft
 4 proposed order. When the Council meets to review a draft proposed order, the Council
 5 does not permit the certificate holder, reviewing agencies or the public to comment on any
 6 issue that may be the basis for a contested case request.

7
 8 **345-027-0069**

9 **Proposed Order, Requests for Contested Case and Council's Final Decision**

- 10 (1) No later than 30 days after the Council has reviewed the draft proposed order and
 11 considered all comments received on the record of the public hearing under 345-027-0067,
 12 the Department of Energy shall issue a proposed order recommending approval,
 13 modification or denial of the request(s) for amendment to the site certificate. The
 14 Department must consider any oral comments made at the public hearing, written
 15 comments received before the close of the record of the public hearing, agency
 16 consultation, and any Council comments. The Department may issue the proposed order at
 17 a later date, but the Department shall, no later than 30 days after the Council has reviewed
 18 the draft proposed order and considered all comments received on the record of the public
 19 hearing, notify the certificate holder in writing of the reasons for the delay.
- 20 (2) Concurrent with issuing the proposed order, the Department shall issue public notice of the
 21 proposed order by posting public notice as an announcement on its website and by sending
 22 public notice by mail or email to:
- 23 (a) Persons on the Council's general mailing list as defined in OAR 345-011-0020,
 - 24 (b) Persons on any special list established for the facility,
 - 25 (c) The reviewing agencies as defined in OAR 345-001-0010(52), and
 - 26 (d) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.
- 27 (3) Notice of the proposed order shall include:
- 28 (a) A description of the facility and the facility's general location.
 - 29 (b) A description of the process for requesting a contested case.
 - 30 (c) The physical and website addresses of where the public may review copies of the
 31 proposed order.
 - 32 (d) The name, address, email address and telephone number of the Department
 33 representative to contact for more information.
- 34 (4) On the same date the notice of proposed order as described in section (2) is issued, the
 35 Department shall send a notice of the opportunity to request a contested case to the
 36 certificate holder and to all persons who commented in person or in writing on the record
 37 of the public hearing as described in OAR 345-027-0067. The notice shall include the
 38 deadline for requesting a contested case and restatements of sections (5), (6), (7), (8) and
 39 (9).
- 40 (5) Only those persons, including the site certificate holder, who commented in person or in
 41 writing on the record of the public hearing described in OAR 345-027-0067 may request a
 42 contested case proceeding on the proposed order for an amendment to the site certificate.
 43 To properly raise an issue in a request for a contested case proceeding on the proposed
 44 order for an amendment, the issue must be within the jurisdiction of the Council, and the

1 person must have raised the issue in person or in writing on the record of the public
2 hearing, unless the Department of Energy did not follow the requirements of OAR 345-027-
3 0067, or unless the action recommended in the proposed order differs materially from the
4 draft proposed order, including any recommended conditions of approval, in which case the
5 person may raise only new issues within the jurisdiction of the Council that are related to
6 such differences. If a person has not raised an issue at the public hearing with sufficient
7 specificity to afford the decision maker an opportunity to respond to the issue, the Council
8 shall not grant a contested case proceeding for that issue. To have raised an issue with
9 sufficient specificity, the person must have presented facts at the public hearing that
10 support that person's position on the issue.

- 11 (6) Contested case requests must be submitted in writing and must be received by the
12 Department by a specified deadline that is at least 30 days from the date of notice in
13 section (4). Contested case requests must include:
- 14 (a) The person's name, mailing address and email address and any organization the
15 person represents;
 - 16 (b) A short and plain statement of the issue or issues the person desires to raise in a
17 contested case proceeding;
 - 18 (c) A statement that describes why the Council should find that the requester properly
19 raised each issue, as described in section (7), including a specific reference to the
20 person's prior comments to demonstrate that the person raised the specific issue or
21 issues on the record of the public hearing, if applicable;
 - 22 (d) A statement that describes why the Council should determine that each identified
23 issue justifies a contested case, under the evaluation described in section (9).
 - 24 (e) A detailed description of the person's interest in the proceeding and how that interest
25 may be affected by the outcome of the proceeding.
 - 26 (f) Name and address of the person's attorney, if any;
 - 27 (g) A statement of whether the person's request to participate in a contested case is as a
28 party or a limited party, and if as a limited party, the precise area or areas in which
29 participation is sought;
 - 30 (h) If the person seeks to protect a personal interest in the outcome of the proceeding, a
31 detailed statement of the person's interest, economic or otherwise, and how such
32 interest may be affected by the results of the proceeding;
 - 33 (i) If the person seeks to represent a public interest in the results of the proceeding, a
34 detailed statement of such public interest, the manner in which such public interest
35 will be affected by the results of the proceeding, and the person's qualifications to
36 represent such public interest; and
 - 37 (j) A statement of the reasons why others who commented on the record of the public
38 hearing cannot adequately represent the interest identified in subsections (h) or (i).
- 39 (7) Before considering whether an issue justifies a contested case proceeding under section (9),
40 the Council must determine that the person requesting a contested case commented in
41 person or in writing on the record of the public hearing and properly raised each issue
42 included in the request. To determine that a person properly raised each issue included in
43 the request, the Council must find that:

- 1 (a) The person making the contested case request raised the issue on the record of the
2 public hearing described in OAR 345-027-0067 with sufficient specificity to afford the
3 Council, the Department and the certificate holder an adequate opportunity to respond
4 to the issue;
- 5 (b) The Department did not follow the requirements of OAR 345-027-0067; or
6 (c) If the action recommended in the proposed order, including any recommended
7 conditions of approval, differs materially from the action recommended in the draft
8 proposed order, the contested case request identified new issues that are related to
9 such material differences.
- 10 (8) If the Council finds that the person requesting a contested case failed to comment in person
11 or in writing on the record of the public hearing or failed to properly raise any issue, as
12 described in section (7), the Council must deny that person's contested case request. If the
13 Council finds that the person requesting a contested case commented in person or in
14 writing on the record of the public hearing and properly raised one or more issues, the
15 Council's determination of whether an issue justifies a contested case, as described in
16 section (9), shall be limited to those issues the Council finds were properly raised.
- 17 (9) After identifying the issues properly raised the Council shall determine whether any properly
18 raised issue justifies a contested case proceeding on that issue. To determine that an issue
19 justifies a contested case proceeding, the Council must find that the request raises a
20 significant issue of fact or law that may affect the Council's determination that the facility,
21 with the change proposed by the amendment, meets the applicable laws and Council
22 standards included in chapter 345 divisions 22, 23 and 24. If the Council does not have
23 jurisdiction over the issue raised in the request, the Council must deny the request.
- 24 (10) The Council must take one of the following actions when determining if a request
25 identifying one or more properly raised issues justifies a contested case proceeding:
- 26 (a) If the Council finds that the request identifies one or more properly raised issues that
27 justify a contested case proceeding, the Council shall conduct a contested case
28 proceeding according to the applicable provisions of OAR 345-015-0012 to -0014 and
29 345-015-0018 to -0085. The Council shall identify the contested case parties and shall
30 identify the issues each contested case party may participate on. The parties to a
31 contested case proceeding shall be limited to those persons who commented on the
32 record of the public hearing and who properly raised issues in their contested case
33 request that the Council found sufficient to justify a contested case, except that the
34 certificate holder is an automatic party to a contested case. The issues a party to a
35 contested case proceeding may participate on shall be limited to those issues that party
36 properly raised in its contested case request that the Council found sufficient to justify a
37 contested case, except that the certificate holder may participate on any issue the
38 Council found sufficient to justify a contested case proceeding.
- 39 (b) If the Council finds that the request identifies one or more properly raised issues that an
40 amendment to the proposed order, including modification to conditions, would settle in
41 a manner satisfactory to the Council, the Council may deny the request as to those
42 issues and direct the Department to amend the proposed order and send a notice of the
43 amended proposed order to the persons described in section (4). Only the certificate
44 holder and those persons who commented on the record of the hearing may, in a

1 writing received by the Department within 30 days after the Department issues the
 2 notice of the amended proposed order, request a contested case proceeding limited to
 3 issues related to the amendment to the proposed order. As described in section (9), the
 4 Council shall determine whether any issue identified in the request for a contested case
 5 proceeding justifies a contested case proceeding. A person's contested case request
 6 under this subsection shall include:

7 (A) The person's name, mailing address and email address;

8 (B) A statement of the contested issues related to the amendment to the proposed
 9 order, including facts believed to be at issue; and

10 (C) A statement that describes why the Council should find an issue justifies a contested
 11 case, as described in section (8).

12 (c) If the Council finds that the request does not identify a properly raised issue that
 13 justifies a contested case proceeding, the Council shall deny the request. In a written
 14 order denying the request, the Council shall state the basis for the denial. The Council
 15 shall then adopt, modify or reject the proposed order based on the considerations
 16 described in OAR-345-027-0071. In a written order the Council shall either grant or deny
 17 issuance of an amended site certificate. If the Council grants issuance of an amended
 18 site certificate, the Council shall issue an amended site certificate, which is effective
 19 upon execution by the Council Chair and by the certificate holder.

20 (11) If there is no request for a contested case proceeding as described in section (6) or
 21 subsection (10)(b), the Council, may adopt, modify or reject the proposed order based on
 22 the considerations described in OAR 345-027-0071. In a written order, the Council shall
 23 either grant or deny issuance of an amended site certificate. If the Council grants issuance
 24 of an amended site certificate, the Council shall issue an amended site certificate, which is
 25 effective upon execution by the Council Chair and by the certificate holder.

26 (12) Judicial review of the Council's final order either granting or denying an amended site
 27 certificate shall be as provided in ORS 469.403.

28
 29 **OAR 345-027-0071 Scope of Council's Review**

30 (1) In making a decision to grant or deny issuance of an amended site certificate, the Council
 31 shall apply the applicable laws and Council standards required under section (2) and in
 32 effect on the dates described in section (3).

33 (2) To issue an amended site certificate, the Council shall determine that the preponderance of
 34 evidence on the record supports the following conclusions:

35 (a) For a request for amendment proposing to add new area to the site boundary, the
 36 portion of the facility within the area added to the site by the amendment complies with
 37 all laws and Council standards applicable to an original site certificate application.

38 (b) For a request for amendment to extend the deadlines for beginning or completing
 39 construction, after considering any changes in facts or law since the date the current
 40 site certificate was executed, the facility complies with all laws and Council standards
 41 applicable to an original site certificate application. However, for requests to extend
 42 completion deadlines, the Council need not find compliance with an applicable law or
 43 Council standard if the Council finds that:

- 1 (A) The certificate holder has spent more than 50 percent of the budgeted costs on
2 construction of the facility;
- 3 (B) The inability of the certificate holder to complete the construction of the facility by
4 the deadline in effect before the amendment is the result of unforeseen
5 circumstances that are outside the control of the certificate holder;
- 6 (C) The standard, if applied, would result in an unreasonable financial burden on the
7 certificate holder; and
- 8 (D) The Council does not need to apply the standard to avoid a significant threat to the
9 public health, safety or the environment;
- 10 (c) For any other requests for amendment not described above, the facility, with the
11 proposed changes, complies with the applicable laws or Council standards that protect a
12 resource or interest that could be affected by the proposed changes.
- 13 (d) For all requests for amendment, the amount of the bond or letter of credit required
14 under OAR 345-022-0050 is adequate.
- 15 (3) In making the findings required to grant an amendment under section (2), the Council shall
16 apply the applicable law and Council standards in effect on the following dates:
- 17 (a) For the applicable substantive criteria under the Council's land use standard, as
18 described in OAR 345-022-0030, the date the certificate holder submitted the request
19 for amendment, and
- 20 (b) For all other applicable laws and Council standards, the date the Council issues the
21 amended site certificate.

22
23 **345-027-003085**

24 **Request for Amendment to Extend Construction Deadlines**

- 25 (1) The certificate holder may request an amendment to the site certificate to extend the
26 deadlines for beginning or completing construction of the facility that the Council has
27 specified in a site certificate or an amended site certificate by submitting a preliminary
28 request for amendment in accordance with 345-027-0060. The preliminary request for
29 amendment must include an explanation of the need for an extension and must be
30 submitted to the Department of Energy before the applicable construction deadline, but no
31 earlier than the date twelve months before the applicable construction deadline.
- 32 (2) A preliminary request for amendment received by the Department within the time allowed
33 under section (1) to extend the deadlines for beginning and completing construction
34 suspends expiration of the site certificate or amended site certificate until the Council acts
35 on the request for amendment. If the Council denies the extension request after the
36 applicable construction deadline, the site certificate is deemed expired as of the applicable
37 construction deadline specified in the site certificate or amended site certificate.
- 38 (3) If the Council grants an amendment under this rule, the Council shall specify new deadlines
39 for beginning or completing construction that are the later of:
- 40 (a) Three years from the deadlines in effect before the Council grants the amendment, or
41 (b) Following a contested case proceeding conducted pursuant to OAR 345-027-0069, two
42 years from the date the Council grants the amendment.
- 43 (4) The Council shall not grant more than two amendments to extend the deadline for
44 beginning construction of a facility or a phase of a facility.

1 **345-027-0090**

2 **Request by Any Person for Amendment to Apply Later-Adopted Laws**

- 3 (1) Any person may request an amendment of a site certificate to apply a law(s), including local
4 government ordinances, statutes, rules or Council standards, adopted after the date the site
5 certificate was executed, if the person contends failure to apply the law(s) results in a
6 significant threat to the public health or safety or to the environment. The Department of
7 Energy itself may initiate such a request.
- 8 (2) To request an amendment to apply later-adopted law(s) under this rule, the person shall
9 submit a preliminary request for amendment to the Department with the information
10 described in 345-027-0060(1)(a),(c),(d) and the following:
11 (a) Identification of the law(s) that the person seeks to apply to the facility; and
12 (b) The particular facts that the person believes clearly show a significant threat to the
13 public health, safety or the environment that requires application of the later adopted
14 law(s).
- 15 (3) If the Department receives a preliminary request for amendment to apply later-adopted
16 law(s) as described in this rule from any person other than the certificate holder, the
17 Department shall send a copy of the request to the certificate holder. The transmittal shall
18 include a deadline by which the certificate holder must submit a response to the
19 Department. In its response, the certificate holder shall state whether it agrees that there is
20 a clear showing of a significant threat to the public health, safety or the environment that
21 requires application of the later-adopted law(s).
22 (a) If the certificate holder concludes the later-adopted law(s) should be applied to the
23 facility, the Council shall review the request to apply later-adopted law(s) as a complete
24 request for amendment in accordance with section (5).
25 (b) If the certificate holder concludes that the law(s) should not be applied to the facility, or
26 if the certificate holder does not respond with its conclusion before the specified
27 deadline, the Department shall ask the Council to determine whether the request
28 clearly shows a significant threat to the public health, safety or the environment that
29 requires application of the later-adopted law(s).
30 (A) If the Council determines there is not a clear showing of a significant threat to the
31 public health, safety or the environment that requires application of the later
32 adopted law(s), the Council shall deny the request to apply later-adopted law(s).
33 (B) If the Council determines there is a clear showing of a significant threat to the public
34 health, safety or the environment that requires application of the later adopted
35 law(s), the Council shall review the request to apply later-adopted law(s) as a
36 complete request for amendment in accordance with section (5)
- 37 (4) A preliminary request for amendment to apply later-adopted law(s) under this rule is
38 considered a complete request for amendment for purposes of OAR 345-027-0063 on:
39 (a) If the request to apply later-adopted law(s) is made by the certificate holder, the date
40 the request is received by the Department.
41 (b) If the request to apply later-adopted law(s) is made by a person other than the
42 certificate holder, and if the certificate holder responds as described in subsection
43 (3)(a), the date the response described in subsection (3)(a) is received by the
44 Department.

- 1 (c) If the request to apply later-adopted law(s) is made by a person other than the
 2 certificate holder, and if the certificate holder responds as described in subsection (3)(b)
 3 or does not respond before the specified deadline under section (3), the date of the
 4 Council's determination under paragraph (3)(b)(B).
- 5 (5) After receiving a complete request for amendment under section (4) of this rule, the Council
 6 shall review the request for amendment as described in OAR 345-027-0065, 345-027-0067,
 7 345-027-0069 and 345-027-0071, except that:
- 8 (a) If the Department recommends approval or modified approval of the requested
 9 amendment, the Department shall include in the proposed order described in OAR 345-
 10 027-0069 any new or modified site certificate conditions necessary to assure
 11 compliance with the law(s) applied to the facility under the proposed order;
- 12 (b) If the Department in its proposed order recommends approval or modified approval of
 13 the requested amendment, the certificate holder may, by written request submitted to
 14 and received by the Department within 30 days after the Department issues the
 15 proposed order, ask the Council to hold a contested case proceeding on the proposed
 16 order. In the request, the certificate holder shall provide a description of the issues to
 17 be contested and a statement of the facts believed to be at issue. If the certificate
 18 holder requests a contested case proceeding, the Council shall conduct a contested case
 19 proceeding according to the applicable provisions of OAR 345-015-0012 to -0014, and
 20 345-015-0018 to 345-015-0085 limited to the issues stated by the certificate holder; and
- 21 (c) The Council shall include new conditions in a site certificate amended under this rule
 22 only if the Council finds that the conditions are necessary based upon a clear showing of
 23 a significant threat to the public health, safety or the environment.

25 **345-027-0100**

26 **Request for Amendment to Transfer Ownership, Possession or Control of the Facility or the** 27 **Certificate Holder**

- 28 (1) For the purpose of this rule:
- 29 (a) A request for amendment to a site certificate to transfer the site certificate is required
 30 for a transaction that results in a change in the ownership, possession or control of the
 31 facility or the certificate holder.
- 32 (b) "New owner" means the person or entity that will gain ownership, possession or control
 33 of the facility or the certificate holder.
- 34 (2) When the certificate holder has knowledge that a transaction that requires a transfer of the
 35 site certificate as described in section (1)(a) is or may be pending, the certificate holder shall
 36 notify the Department of Energy. In the notice, the certificate holder shall include the name
 37 and contact information of the new owner, and the date of the transfer of ownership. If
 38 possible, the certificate holder shall notify the Department at least 60 days before the date
 39 of the transfer of ownership.
- 40 (3) A transaction that would require a transfer of the site certificate as described in subsection
 41 (1)(a) does not terminate the transferor's duties and obligations under the site certificate
 42 until the Council approves a transfer request and issues an amended site certificate. The
 43 new owner is not allowed to construct or operate the facility until an amended site

- 1 certificate as described in section (10) or a temporary amended site certificate as described
2 in section (11) becomes effective.
- 3 (4) To request an amendment to transfer the site certificate, the new owner shall submit a
4 written request to the Department that includes the information described in OAR 345-021-
5 0010(1)(a), (d), (f) and (m), a certification that the new owner agrees to abide by all terms
6 and conditions of the site certificate currently in effect and, if known, the expected date of
7 the transaction. If applicable, the new owner shall include in the request the information
8 described in OAR 345-021-0010(1)(y)(O)(iv).
- 9 (5) The Department may require the new owner to submit a written statement from the
10 current certificate holder, or a certified copy of an order or judgment of a court of
11 competent jurisdiction, verifying the new owner's right, subject to the provisions of ORS
12 Chapter 469 and the rules of this chapter, to possession or control of the site or the facility.
- 13 (6) Within 15 days after receiving a request for amendment to transfer the site certificate, the
14 Department shall send a notice of the request by mail or email to the reviewing agencies as
15 defined in OAR 345-001-0010, to all persons on the Council's general mailing list as defined
16 in OAR 345-011-0020, to any special list established for the facility and to the updated
17 property owner list submitted by the new owner under section (4). In the notice, the
18 Department shall describe the transfer request, specify a date by which comments are due
19 and state that the date of the Council's transfer hearing will be announced on the
20 Department's website.
- 21 (7) Before acting on the request for amendment to transfer the site certificate, the Council shall
22 hold a transfer hearing. The Council shall hold the transfer hearing during a Council meeting
23 and shall provide notice of the hearing on its meeting agenda, which will be sent by mail or
24 email to the Council's general mailing list in advance of the meeting. The transfer hearing is
25 not a contested case hearing. During the hearing the Council will accept comments from the
26 public, reviewing agencies and new owner regarding the new owner's compliance with the
27 Council standards described in section (8)(a).
- 28 (8) At the conclusion of the transfer hearing or at a later meeting, the Council may issue an
29 order approving the transfer request if the Council finds that:
- 30 (a) The new owner complies with the Council standards described in OAR 345-022-0010,
31 345-022-0050 and, if applicable, OAR 345-024-0710(1); and
- 32 (b) The new owner is or will be lawfully entitled to possession or control of the site or the
33 facility described in the site certificate.
- 34 (9) Except as described in section (12), the Council shall not otherwise change the terms and
35 conditions of the site certificate in an order approving the transfer request.
- 36 (10) Upon issuing the order described in section (8), the Council shall issue an amended site
37 certificate that names the new owner as the new certificate holder or as the new owner of
38 the certificate holder. The amended site certificate is effective upon execution by the
39 Council chair and the new owner. The Council shall issue the amended site certificate in
40 duplicate counterpart originals and each counterpart, upon signing, will have the same
41 effect.
- 42 (11) If the Council chair determines that special circumstances justify emergency action, the
43 Council chair may, upon a written request from the new owner that includes a showing that
44 the new owner can meet the requirements of section (8), issue a temporary amended site

1 certificate that names the new owner as the new certificate holder or as the new owner of
 2 the certificate holder. The temporary amended site certificate is effective upon execution
 3 by the Council chair and the new owner. The temporary amended site certificate expires
 4 when an amended site certificate as described in section (10) becomes effective or as the
 5 Council otherwise orders.

6 **345-027-0110**

7 **Termination of a Site Certificate**

- 8
- 9 (1) A certificate holder may apply to the Council to terminate a site certificate at any time,
 10 subject to the requirements of this rule.
- 11 (2) A certificate holder must apply to the Council to terminate a site certificate within two years
 12 following cessation of construction or operation of the facility.
- 13 (3) If the certificate holder fails to apply to the Council to terminate the site certificate and the
 14 Council finds that the certificate holder has permanently ceased construction or operation
 15 of the facility, then the Council may terminate the site certificate according to the
 16 procedure described in OAR 345-~~027-0020(16)~~025-0006(16).
- 17 (4) In an application for termination of the site certificate, the certificate holder shall include a
 18 proposed final retirement plan for the facility and site. The certificate holder shall submit an
 19 original and two printed copies of the application for termination and the proposed final
 20 retirement plan to the Department of Energy. Upon a request by the Department, the
 21 certificate holder must submit printed copies of the application for termination and the
 22 proposed final retirement plan for members of the Council. In addition to the printed
 23 copies, the certificate holder shall submit the full copies of the application for termination
 24 and the proposed final retirement plan in a non-copy-protected electronic format
 25 acceptable to the Department.
- 26 (5) In the proposed final retirement plan, the certificate holder shall include:
- 27 (a) A plan for retirement that provides for completion of retirement without significant
 28 delay and that protects public health, safety and the environment.
- 29 (b) A description of actions the certificate holder proposes to take to restore the site to a
 30 useful, non-hazardous condition, including information on how impacts to fish, wildlife
 31 and the environment would be minimized during the retirement process.
- 32 (c) A current detailed cost estimate and a plan for ensuring the availability of adequate
 33 funds for completion of retirement.
- 34 (d) An updated list of the owners of property located within or adjacent to the site of the
 35 facility, as described in OAR 345-021-0010(1)(f).
- 36 (6) Within 15 days after receiving an application for termination of a site certificate, the
 37 Department of Energy shall:
- 38 (a) Send a notice of the application by mail or email to all persons on the Council's general
 39 mailing list as defined in OAR 345-011-0020, to any special list established for the facility
 40 and to the updated property owner list submitted by the certificate holder under
 41 subsection (5) specifying a date by which comments on the application are due.
- 42 (b) Send copies of the application for termination by mail or email to the reviewing agencies
 43 as defined in OAR 345-001-0010 and shall ask those agencies to comment by a specified
 44 date.

- 1 (c) Post an announcement of the application for termination on the Department’s website.
 2 (7) The Council shall review the proposed final retirement plan and shall consider any
 3 comments received from the public and the reviewing agencies. The Council may approve
 4 the proposed final retirement plan or modify the plan to comply with the rules of this
 5 chapter and applicable conditions in the site certificate. The Council shall issue an order
 6 authorizing retirement according to the approved or modified final retirement plan and
 7 subject to any conditions the Council finds appropriate. The Council's order may be
 8 appealed as described in ORS 183.480.
 9 (8) When the Council finds that the certificate holder has completed the retirement of the
 10 facility according to the Council's order authorizing retirement, the Council shall issue an
 11 order terminating the site certificate.
 12 (9) When the Council finds that the site certificate has expired as described in OAR 345-027-
 13 ~~0000~~0013, the Council shall issue an order terminating the site certificate.
 14
 15

16 Department of Energy Approval of Gas Storage Testing Pipelines

17 345-027-0210

18 General

- 19 (1) A person shall not construct a gas storage testing pipeline unless the certificate holder of the
 20 Council certified facility to which the pipeline would connect obtains, before construction,
 21 the approval of the Department of Energy for the construction, operation and retirement of
 22 the proposed pipeline as required under ORS 469.405(3).
 23 (2) For the purposes of OAR 345-027-0210 through 345-027-0240:
 24 (a) “Gas storage testing pipeline” means a pipeline, but not a temporary pipeline, that is less
 25 than 16 inches in diameter and less than five miles in length, that is used to test or
 26 maintain an underground gas storage reservoir and that would connect to a Council
 27 certified facility if the storage reservoir proves feasible for operational use;
 28 (b) “Temporary pipeline” means a pipeline that has no potential for operational use;
 29 (c) “Council certified facility” means an energy facility for which the Council has issued a site
 30 certificate that is either a surface facility related to an underground gas storage
 31 reservoir or a gas pipeline;
 32 (d) “Connect” means join for the purpose of operational use;
 33 (e) “Test or maintain” means transporting gas to an underground gas storage reservoir for
 34 the purposes of determining whether the reservoir is feasible for operational use or
 35 maintaining the gas storage capacity of the reservoir but does not include operational
 36 use;
 37 (f) “Operational use” means transporting gas to an underground gas storage reservoir for
 38 the purpose of storing gas until it is needed for sale or for withdrawing gas from an
 39 underground gas storage reservoir for the purpose of sale;
 40 (g) “Council substantive standards” means the following standards:
 41 (A) Structural Standard, OAR 345-022-0020;
 42 (B) Soil Protection, OAR 345-022-0022;
 43 (C) Protected Areas, OAR 345-022-0040(1) but excluding (2) and (3);
 44 (D) Retirement and Financial Assurance, OAR 345-022-0050;

- 1 (E) Fish and Wildlife Habitat, OAR 345-022-0060;
- 2 (F) Threatened and Endangered Species, OAR 345-022-0070
- 3 (G) Scenic Resources, OAR 345-022-0080;
- 4 (H) Historic, Cultural and Archaeological Resources, OAR 345-022-0090;
- 5 (I) Recreation, 345-022-0100;
- 6 (J) Public Services, OAR 345-022-0110;
- 7 (K) Waste Minimization, OAR 345-022-0120; and
- 8 (L) Public Health and Safety, OAR 345-024-0030(2), (3) and (4);

9 (h) "Information requirements" means information that would support the findings
 10 described in OAR 345-024-0030(2) and the information described in 345-021-0010(1)(h),
 11 (i), (j), (L), (m), (p), (q), (r), (s), (t), (u), (v), and (w).

12 **345-027-0220**

13 **Request for Approval**

- 14 (1) Before submitting a request for approval to construct, operate and retire a gas storage
 15 testing pipeline, the certificate holder shall:
 16 (a) Inform the Department of Energy of the proposed pipeline, including its diameter,
 17 length, location, capacity and maximum operating pressure; and
 18 (b) Provide to the Department a map showing the location of the proposed pipeline.
- 19 (2) After receiving the information described in section (1), the Department shall confer with
 20 the certificate holder about the Council substantive standards and information
 21 requirements that might apply to the proposed pipeline and any extraordinary
 22 circumstances that might affect the time requirements for completing the approval process.
 23 Within 7 days after conferring with the certificate holder, the Department shall send a letter
 24 to the certificate holder that includes the following:
 25 (a) Identification of the Council substantive standards that are applicable to the request for
 26 approval of the proposed pipeline;
 27 (b) Identification of the information requirements that are applicable to the request for
 28 approval of the proposed pipeline;
 29 (c) The time requirements for the approval process, if different from the time requirements
 30 described in OAR 345-027-0230.
- 31 (3) The certificate holder shall submit to the Department a written request for approval to
 32 construct, operate and retire a gas storage testing pipeline with the fee required by the fee
 33 schedule established under ORS 469.441. The certificate holder shall submit the original and
 34 two paper copies of the request to the Department. The certificate holder shall provide
 35 additional copies to the Department upon request and copies or access to copies to any
 36 person requesting copies. In addition to the printed copies of the request for approval, the
 37 certificate holder shall submit the full request in a non-copy-protected electronic format
 38 acceptable to the Department.
- 39 (4) In a request for approval, the certificate holder shall include:
 40 (a) The name and mailing address of the certificate holder and the name, mailing address,
 41 email address and phone number of the individual responsible for submitting the
 42 request;
 43

- 1 (b) A description of the purpose and operation of the proposed pipeline and a discussion of
 2 whether the use of the gas storage testing pipeline for reservoir testing or maintenance
 3 will require an increase in the compression available in the Council certified facility to
 4 which the proposed pipeline would connect in addition to the compression that is
 5 permitted under the site certificate;
 6 (c) Identification of the Council certified facility to which the proposed pipeline would
 7 connect;
 8 (d) A description of the proposed pipeline, including its diameter, length, location, capacity
 9 and maximum operating pressure;
 10 (e) A map showing the location of the proposed pipeline;
 11 (f) A list of the names and mailing addresses of all owners of record, as shown on the most
 12 recent property tax assessment role, of property where the proposed pipeline is located
 13 and within 500 feet of the location of the proposed pipeline;
 14 (g) The information that the Department has identified in the letter described in section (2);
 15 and
 16 (h) Any other information that the Department requests as needed to make the findings
 17 described in the applicable standards.

18

19 **345-027-0230**20 **Review of a Request for Approval**

- 21 (1) Within 7 days after receiving a request for approval to construct, operate and retire a gas
 22 storage testing pipeline, the Department of Energy shall:
 23 (a) Send copies of the request by mail, email or any other form of electronic delivery to the
 24 following agencies with a notice asking the agencies to submit written comments on the
 25 request within 14 days from the date of the notice:
 26 (A) Oregon Department of Fish and Wildlife;
 27 (B) Oregon Department of Geology and Mineral Industries;
 28 (C) Oregon Public Utility Commission;
 29 (D) Oregon Department of Agriculture;
 30 (E) Division of State Lands; and
 31 (F) State Historic Preservation Office.
 32 (b) Send a notice of the request, including a map showing the location of the proposed
 33 pipeline, by mail, email or any other form of electronic delivery to the following stating
 34 that the agencies and planning authority may submit written comments on the request
 35 within 14 days from the date of the notice:
 36 (A) Oregon Department of Forestry;
 37 (B) Oregon Department of Environmental Quality; and
 38 (C) The planning authority of the county or counties where the proposed pipeline is
 39 located.
 40 (c) Send a notice of the request, including a map showing the location of the proposed
 41 pipeline, by mail or email to the property owners the certificate holder has listed in the
 42 request stating that property owners may submit written comments on the request
 43 within 14 days from the date of the notice.
 44 (d) Post an announcement of the request on the Department's website.

- 1 (2) Within 21 days from the deadline for comments described in section (1) or such longer
2 period as the Department has specified in the letter described in OAR 345-027-0220(2), the
3 Department shall issue a final order stating its findings on the applicable Council substantive
4 standards and its approval or disapproval of the request. In an order approving a request,
5 the Department shall include conditions that the Department finds necessary to ensure
6 compliance with the applicable standards and conditions required by 345-027-0240.
- 7 (3) The Department shall send a notice of the final order to the certificate holder, to the
8 property owners the certificate holder listed in the request and to any person who
9 commented on the request. In the notice, the Department shall state that judicial review of
10 the order is as provided in ORS 469.403.
- 11 (4) The Department may amend an order approving the construction, operation and retirement
12 of a gas storage testing pipeline.
- 13 (5) Notwithstanding ORS 469.503(3), the Department shall not review the proposed pipeline for
14 compliance with other state standards.
- 15 (6) Notwithstanding ORS 469.401(3), the approval of a gas storage testing pipeline by the
16 Department does not bind any state or local agency.

17

18 345-027-0240**19 Conditions**

20 In an order approving the construction, operation and retirement of a gas storage testing
21 pipeline, the Department of Energy may impose conditions it finds necessary to ensure
22 compliance with the Council substantive standards it identified as applicable in the letter
23 described in OAR 345-027-0220(2). In addition, the Department shall impose the following
24 conditions:

- 25 (1) The certificate holder shall design, construct, operate and retire the gas storage testing
26 pipeline in compliance with applicable Council rules and applicable federal, state and local
27 laws, rules and ordinances in effect at the time the Department issues the order;
- 28 (2) The certificate shall design, construct, operate and retire the gas storage testing pipeline
29 substantially as described in representations in the request for approval and supporting
30 record that the Department finds to be binding commitments made by the certificate
31 holder;
- 32 (3) The certificate holder shall prevent the development of any conditions in the area of the gas
33 storage testing pipeline that would preclude restoration of the area to a useful, non-
34 hazardous condition to the extent that prevention of such conditions is within the control of
35 the certificate holder;
- 36 (4) Upon completion of construction of the pipeline, the certificate holder shall dispose of all
37 refuse and remove all temporary structures not needed to test or maintain an underground
38 gas storage reservoir;
- 39 (5) The certificate holder shall notify the Department of Energy, the State Building Codes
40 Division and the Department of Geology and Mineral Industries promptly if investigations or
41 trenching in the area of the pipeline reveal soil or geological conditions that differ
42 significantly from those described in the request for approval;
- 43 (6) The certificate holder shall submit to the Department copies of all incident reports involving
44 the gas storage testing pipeline required under 49 CFR Sec. 191.15;

- 1 (7) The certificate holder shall allow properly identified representatives of the Council or the
2 Department of Energy to inspect the pipeline at any time, including all materials, activities,
3 premises and records pertaining to design, construction, operation or retirement of the
4 pipeline;
- 5 (8) The certificate holder shall notify the Department when it begins construction, shall keep
6 the Department informed of construction progress and any unusual events or
7 circumstances and shall notify the Department when it begins to use the pipeline for
8 reservoir testing or maintenance;
- 9 (9) The certificate holder shall notify the Department if it terminates use of the gas storage
10 testing pipeline; and
- 11 (10) If the certificate holder decides to convert the gas storage testing pipeline to operational
12 use, the certificate holder shall notify the Department and, if required under OAR 345-027-
13 0050, submit a request to amend the site certificate.

DIVISION 27

~~SITE CERTIFICATE CONDITIONS, EXPIRATION, AMENDMENT, TRANSFER~~ AND TERMINATION
OF SITE CERTIFICATES, AND DEPARTMENT OF ENERGY APPROVAL OF GAS STORAGE TESTING
PIPELINES

345-027-00000013(amend and renumber)

Certificate Expiration

If the certificate holder does not begin construction of the facility by the construction beginning date specified in the site certificate or amended site certificate, the site certificate expires on the construction beginning date specified, unless expiration of the site certificate is suspended pending final action by the Council ~~in the site certificate or in an~~ on a request for amendment of ~~the site certificate granted according to the rules of this division,~~ a site certificate pursuant to OAR 345-027-0085(2).

345-027-0011(amend)

Applicability

The rules in this division ~~do not~~ apply to all facilities ~~covered by~~ under the Council's jurisdiction except those facilities described in ORS 469.410(1), including the Trojan energy facility-, and except that rules 345-027-0050, -0060, -0070, -0080, -0090 and -0100 that were in effect prior to Month XX, 2017 apply to proposed changes that have been included in requests for amendment to site certificates and change requests that have been received by the Department prior to Month XX, 2017.

345-027-0020 (renumber to 345-025-0006)

~~Mandatory Conditions in Site Certificates~~

~~The Council shall impose the following conditions in every site certificate. The Council may impose additional conditions.~~

~~(1) The Council shall not change the conditions of the site certificate except as provided for in OAR Chapter 345, Division 27.~~

~~(2) The certificate holder shall submit a legal description of the site to the Department of Energy within 90 days after beginning operation of the facility. The legal description required by this rule means a description of metes and bounds or a description of the site by reference to a map and geographic data that clearly and specifically identify the outer boundaries that contain all parts of the facility.~~

~~(3) The certificate holder shall design, construct, operate and retire the facility:~~

~~(a) Substantially as described in the site certificate;~~

~~(b) In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the site certificate is issued; and~~

~~(c) In compliance with all applicable permit requirements of other state agencies.~~

~~(4) The certificate holder shall begin and complete construction of the facility by the dates specified in the site certificate.~~

~~(5) Except as necessary for the initial survey or as otherwise allowed for wind energy facilities, transmission lines or pipelines under this section, the certificate holder shall not begin~~

1 ~~construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until~~
2 ~~the certificate holder has construction rights on all parts of the site. For the purpose of this rule,~~
3 ~~“construction rights” means the legal right to engage in construction activities. For wind energy~~
4 ~~facilities, transmission lines or pipelines, if the certificate holder does not have construction~~
5 ~~rights on all parts of the site, the certificate holder may nevertheless begin construction, as~~
6 ~~defined in 345-001-0010, or create a clearing on a part of the site if the certificate holder has~~
7 ~~construction rights on that part of the site and:~~

8 ~~(a) The certificate holder would construct and operate part of the facility on that part of the~~
9 ~~site even if a change in the planned route of a transmission line or pipeline occurs during the~~
10 ~~certificate holder’s negotiations to acquire construction rights on another part of the site; or~~

11 ~~(b) The certificate holder would construct and operate part of a wind energy facility on that~~
12 ~~part of the site even if other parts of the facility were modified by amendment of the site~~
13 ~~certificate or were not built.~~

14 ~~(6) If the certificate holder becomes aware of a significant environmental change or impact~~
15 ~~attributable to the facility, the certificate holder shall, as soon as possible, submit a written~~
16 ~~report to the Department describing the impact on the facility and any affected site certificate~~
17 ~~conditions.~~

18 ~~(7) The certificate holder shall prevent the development of any conditions on the site that~~
19 ~~would preclude restoration of the site to a useful, non-hazardous condition to the extent that~~
20 ~~prevention of such site conditions is within the control of the certificate holder.~~

21 ~~(8) Before beginning construction of the facility, the certificate holder shall submit to the State~~
22 ~~of Oregon, through the Council, a bond or letter of credit in a form and amount satisfactory to~~
23 ~~the Council to restore the site to a useful, non-hazardous condition. The certificate holder shall~~
24 ~~maintain a bond or letter of credit in effect at all times until the facility has been retired. The~~
25 ~~Council may specify different amounts for the bond or letter of credit during construction and~~
26 ~~during operation of the facility.~~

27 ~~(9) The certificate holder shall retire the facility if the certificate holder permanently ceases~~
28 ~~construction or operation of the facility. The certificate holder shall retire the facility according~~
29 ~~to a final retirement plan approved by the Council, as described in OAR 345-027-0110. The~~
30 ~~certificate holder shall pay the actual cost to restore the site to a useful, non-hazardous~~
31 ~~condition at the time of retirement, notwithstanding the Council’s approval in the site~~
32 ~~certificate of an estimated amount required to restore the site.~~

33 ~~(10) The Council shall include as conditions in the site certificate all representations in the site~~
34 ~~certificate application and supporting record the Council deems to be binding commitments~~
35 ~~made by the applicant.~~

36 ~~(11) Upon completion of construction, the certificate holder shall restore vegetation to the~~
37 ~~extent practicable and shall landscape all areas disturbed by construction in a manner~~
38 ~~compatible with the surroundings and proposed use. Upon completion of construction, the~~
39 ~~certificate holder shall remove all temporary structures not required for facility operation and~~
40 ~~dispose of all timber, brush, refuse and flammable or combustible material resulting from~~
41 ~~clearing of land and construction of the facility.~~

42 ~~(12) The certificate holder shall design, engineer and construct the facility to avoid dangers to~~
43 ~~human safety presented by seismic hazards affecting the site that are expected to result from~~
44 ~~all maximum probable seismic events. As used in this rule “seismic hazard” includes ground~~

1 shaking, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement and
2 subsidence.

3 ~~(13) The certificate holder shall notify the Department, the State Building Codes Division and
4 the Department of Geology and Mineral Industries promptly if site investigations or trenching
5 reveal that conditions in the foundation rocks differ significantly from those described in the
6 application for a site certificate. After the Department receives the notice, the Council may
7 require the certificate holder to consult with the Department of Geology and Mineral Industries
8 and the Building Codes Division and to propose mitigation actions.~~

9 ~~(14) The certificate holder shall notify the Department, the State Building Codes Division and
10 the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers,
11 deformations or clastic dikes are found at or in the vicinity of the site.~~

12 ~~(15) Before any transfer of ownership of the facility or ownership of the site certificate holder,
13 the certificate holder shall inform the Department of the proposed new owners. The
14 requirements of OAR 345-027-0100 apply to any transfer of ownership that requires a transfer
15 of the site certificate.~~

16 ~~(16) If the Council finds that the certificate holder has permanently ceased construction or
17 operation of the facility without retiring the facility according to a final retirement plan
18 approved by the Council, as described in OAR 345-027-0110, the Council shall notify the
19 certificate holder and request that the certificate holder submit a proposed final retirement
20 plan to the Office within a reasonable time not to exceed 90 days. If the certificate holder does
21 not submit a proposed final retirement plan by the specified date, the Council may direct the
22 Department to prepare a proposed final retirement plan for the Council's approval. Upon the
23 Council's approval of the final retirement plan, the Council may draw on the bond or letter of
24 credit described in section (8) to restore the site to a useful, non-hazardous condition according
25 to the final retirement plan, in addition to any penalties the Council may impose under OAR
26 Chapter 345, Division 29. If the amount of the bond or letter of credit is insufficient to pay the
27 actual cost of retirement, the certificate holder shall pay any additional cost necessary to
28 restore the site to a useful, non-hazardous condition. After completion of site restoration, the
29 Council shall issue an order to terminate the site certificate if the Council finds that the facility
30 has been retired according to the approved final retirement plan.~~

31 32 **345-027-0023(renumber to 345-025-0010)**

33 **Site Specific Conditions**

34 The Council may include the following conditions, as appropriate, in the site certificate:

35 (1) If the facility uses coal, the certificate holder shall take all necessary steps to ensure that
36 surface and groundwater are not contaminated by run-off or seepage associated with coal or
37 ash storage, transport or disposal. The certificate holder shall handle coal and ash so as to
38 minimize the likelihood of coal dust and ash being windblown and causing an environmental or
39 public health problem. If the certificate holder permanently disposes of ash on the facility site,
40 the certificate holder shall cover the ash with a layer of topsoil and revegetate the area.

41 (2) If the energy facility or related or supporting facility is a natural gas pipeline, the certificate
42 holder shall submit to the Department copies of all incident reports involving the pipeline
43 required under 49 CFR Sec. 191.15.

44 (3) If the facility includes any pipeline under Council jurisdiction:

~~(a) The certificate holder shall design, construct and operate the pipeline in accordance with the requirements of the U.S. Department of Transportation as set forth in Title 49, Code of Federal Regulations, Part 192, in effect on August 15, 2011; and~~

~~(b) The certificate holder shall develop and implement a program using the best available practicable technology to monitor the proposed pipeline to ensure protection of public health and safety.~~

~~(4) If the facility includes any transmission line under Council jurisdiction:~~

~~(a) The certificate holder shall design, construct and operate the transmission line in accordance with the requirements of the 2012 Edition of the National Electrical Safety Code approved on June 3, 2011, by the American National Standards Institute; and~~

~~(b) The certificate holder shall develop and implement a program that provides reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity are grounded or bonded throughout the life of the line.~~

~~(5) If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a pipeline or transmission line, the Council shall specify an approved corridor in the site certificate and shall allow the certificate holder to construct the pipeline or transmission line anywhere within the corridor, subject to the conditions of the site certificate. If the applicant has analyzed more than one corridor in its application for a site certificate, the Council may, subject to the Council's standards, approve more than one corridor.~~

~~(6) If the facility is a surface facility related to an underground gas storage reservoir, the Council shall, in the site certificate, specify the site boundary and total permitted daily throughput of the facility.~~

~~(7) If the facility is subject to a carbon dioxide emissions standard adopted by the Council or enacted by statute, the Council shall include in the site certificate appropriate conditions as described in OAR 345-024-0550, 345-024-0560, 345-024-0590, 345-024-0600, 345-024-0620, 345-024-0630 and 345-024-0710.~~

345-027-0028(renumber to 345-025-0016)

Monitoring and Mitigation Conditions

~~In the site certificate, the Council shall include conditions that address monitoring and mitigation to ensure compliance with the standards contained in OAR Chapter 345, Division 22 and Division 24. The site certificate applicant, or for an amendment, the certificate holder, shall develop proposed monitoring and mitigation plans in consultation with the Department and, as appropriate, other state agencies, local governments and tribes. Monitoring and mitigation plans are subject to Council approval. The Council shall incorporate approved monitoring and mitigation plans in applicable site certificate conditions.~~

345-027-00300085(amend and renumber)

Request for Amendment to Extend Construction Beginning and Completion Deadlines

(1) The certificate holder may request an amendment to the site certificate to extend the deadlines for beginning or completing construction of the facility that the Council has specified in a site certificate or an amended site certificate. ~~The certificate holder shall submit~~ by submitting a preliminary request that includes for amendment in accordance

1 with 345-027-0060. The preliminary request for amendment must include an explanation of
 2 the need for an extension and ~~that conforms~~must be submitted to the
 3 ~~requirements~~Department of 345-027-0060Energy before the applicable construction
 4 deadline, but no later~~earlier~~ than six~~the date twelve~~ months before the ~~date of the~~
 5 ~~applicable deadline, or, if the certificate holder demonstrates good cause for the delay in~~
 6 ~~submitting the request, no later than the~~ applicable construction deadline.

7 (2) A ~~request~~preliminary request for amendment received by the Department within the time
 8 allowed ~~in~~under section (1) to extend the deadlines for beginning ~~or~~and completing
 9 construction suspends ~~those deadlines~~expiration of the site certificate or amended site
 10 certificate until the Council acts on the request, ~~for amendment~~. If the Council ~~denies the~~
 11 extension request after the applicable construction deadline, the site certificate is deemed
 12 expired as of the applicable construction deadline specified in the site certificate or amended
 13 site certificate.

14 ~~(3) The Council shall review the request for amendment as described in OAR 345-027-0070.~~

15 (4) If the Council grants an amendment under this rule, the Council shall specify new deadlines
 16 for beginning or completing construction that are ~~not more than two years from the~~
 17 ~~deadlines in effect before the Council grants the amendment.~~the later of:

18 (a) Three years from the deadlines in effect before the Council grants the amendment, or

19 (b) Following a contested case proceeding conducted pursuant to OAR 345-027-0069, two
 20 years from the date the Council grants the amendment.

21 (4) The Council shall not grant more than two amendments to extend the deadline for
 22 beginning construction of a facility or a phase of a facility.

23 ~~(5) To grant an amendment extending the deadline for beginning or completing construction of~~
 24 ~~an energy facility subject to OAR 345-024-0550, 345-024-0590, or 345-024-0620, the~~
 25 ~~Council must find that the facility complies with the carbon dioxide standard in effect at the~~
 26 ~~time of the Council's order on the amendment.~~

28 **345-027-0050(amend)**

29 **When Changes Requiring an Amendment is Required**

30 ~~(1) Except as for changes~~ allowed under ~~sections (2) and (6),~~OAR 345-027-0053 of this rule, an
 31 amendment to a site certificate is required to:

32 (1) Transfer ownership of the facility or the certificate holder must submit a request to amend
 33 the site certificate to design as described in OAR 345-027-0100;

34 (2) Apply later-adopted law(s) as described in OAR 345-027-0090;

35 (3) Extend the construction beginning or completion deadline as described in OAR 345-027-
 36 0085;

37 (4) Add area to the site boundary; and

38 (5) Design, construct or operate a facility in a manner different from the description in the site
 39 certificate if the proposed change:

40 (a) ~~(a)~~ Could result in a significant adverse impact that the Council has not addressed in an
 41 earlier order and the impact affects a resource or interest protected by a Council
 42 standardsstandard;

43 (b) ~~(b)~~ Could impair the certificate holder's ability to comply with a site certificate
 44 condition; or

1 ~~(c) (e)~~ Could require a new condition or a change to a condition in the site certificate.

2 ~~(2) A site certificate amendment is not required if a proposed change in the design,~~
3 ~~construction or operation of a facility is in substantial compliance with the terms and conditions~~
4 ~~of the site certificate and is a change:~~

5 ~~(a) To an electrical generation facility that would increase the electrical generating capacity and~~
6 ~~would not increase the number of electric generators at the site, change fuel type, increase fuel~~
7 ~~consumption by more than 10 percent or enlarge the facility site;~~

8 ~~(b) To the number or location of pipelines for a surface facility related to an underground gas~~
9 ~~storage reservoir that would not result in the facility exceeding permitted daily throughput or~~
10 ~~enlarge the facility site;~~

11 ~~(c) To the number, size or location of pipelines for a geothermal energy facility that would not~~
12 ~~enlarge the facility site;~~

13 ~~(d) To a pipeline or transmission line that is a related or supporting facility that would extend~~
14 ~~or modify the pipeline or transmission line or expand the right-of-way, when the change is to~~
15 ~~serve customers other than the energy facility; or~~

16 ~~(e) To an aspect or feature of the facility, operating procedures or management structures not~~
17 ~~addressed in the site certificate.~~

18 ~~(3) If the certificate holder concludes that a proposed change does not require a site certificate~~
19 ~~amendment under section (1), the certificate holder shall, nevertheless, complete an~~
20 ~~investigation sufficient to demonstrate that the proposed change in the design, construction or~~
21 ~~operation of the facility would comply with applicable Council standards. The certificate holder~~
22 ~~shall complete the investigation before implementing the proposed change. The certificate~~
23 ~~holder shall prepare a written evaluation describing the investigation and shall make the~~
24 ~~evaluation available to the Department for inspection at any time.~~

25 ~~(4) In the annual reports and semiannual construction progress reports required by OAR 345-~~
26 ~~026-0080, the certificate holder shall describe all significant changes made during the reporting~~
27 ~~period to the design, construction and operation of the facility without an amendment of the~~
28 ~~site certificate. The certificate holder shall keep a written record of the basis for concluding that~~
29 ~~an amendment of the site certificate was not required. The Department, at any time, may~~
30 ~~inspect the changes made to the facility and may inspect the certificate holder's written record~~
31 ~~of the basis for concluding that an amendment of the site certificate was not required.~~

32 ~~(5) A certificate holder may submit a change request in writing to the Department for a~~
33 ~~determination whether a proposed change requires a site certificate amendment. In the change~~
34 ~~request, the certificate holder must describe the proposed change, explain the basis for the~~
35 ~~certificate holder's conclusion that an amendment is not required under section (1), and~~
36 ~~provide the written evaluation described in section (3). The Department shall respond in writing~~
37 ~~as promptly as possible. The Department may refer its determination to the Council for~~
38 ~~concurrence, modification or rejection. At the request of the certificate holder or a Council~~
39 ~~member, the Department must refer its determination to the Council for concurrence,~~
40 ~~modification or rejection.~~

41 ~~(6) A site certificate amendment is not required for the construction of a pipeline less than 16~~
42 ~~inches in diameter and less than five miles in length that is proposed to be constructed to test~~
43 ~~or maintain an underground gas storage reservoir. If the proposed pipeline would connect to a~~
44 ~~surface facility related to an underground gas storage reservoir for which the Council has issued~~

~~a site certificate or to a gas pipeline for which the Council has issued a site certificate, the certificate holder must obtain, prior to construction, the approval of the Department for the construction, operation and retirement of the proposed pipeline. To obtain Department approval, the certificate holder shall submit a request as described in OAR 345-027-0210 through 345-027-0240.~~

345-027-0051(adopt)

Requests for Amendment Process

(1) The transfer process, described in 345-027-0100, shall apply to the Council's review of a request for amendment to a site certificate to transfer a site certificate.

(2) The standard process, consisting of rules 345-027-0059, -0060, -0063, -0065, -0067, -0069 and -0071, shall apply to the Council's review of a request for amendment proposing a change described in 345-027-0050(2), (3), (4) and (5).

(3) The Council may act concurrently on any combination of proposed changes included in a request for amendment. Concurrent proposed changes are subject to the substantive requirements applicable to each respective proposed change and the Council shall review all proposed changes through the process with the more procedural steps applicable to any one of the proposed changes.

345-027-0053(adopt)

Changes Exempt from Requiring an Amendment

An amendment to a site certificate is not required if the proposed change in the design, construction or operation of a facility is in substantial compliance with the terms and conditions of the site certificate, and is a change:

(1) To an electrical generation facility that would increase the electrical generating capacity and would not increase the number of electric generators at the site, change fuel type, increase fuel consumption by more than 10 percent or enlarge the facility site;

(2) To the number or location of pipelines for a surface facility related to an underground gas storage reservoir that would not result in the facility exceeding permitted daily throughput or a change to the site boundary;

(3) To the number, size or location of pipelines for a geothermal energy facility that would not result in a change to the site boundary;

(4) To a pipeline that is a related or supporting facility that delivers natural gas to the energy facility if the change would extend or modify the pipeline or expand the right-of-way, when the change is exclusively to serve gas users other than the energy facility;

(5) To a transmission line that is a related or supporting facility if the change would extend or modify the transmission line or expand the right-of-way, when the change is exclusively to serve the transmission needs of a separate energy facility or energy user; or

(6) To construct a pipeline less than 16 inches in diameter and less than five miles in length to test or maintain an underground gas storage reservoir. If the proposed pipeline would connect to a surface facility related to an underground gas storage reservoir for which the Council has issued a site certificate or to a gas pipeline for which the Council has issued a site certificate, the certificate holder must obtain, prior to construction, the approval of the Department of Energy for the construction, operation and retirement of the proposed

1 pipeline. To obtain Department approval, the certificate holder must submit a request as
2 described in OAR 345-027-0210 through OAR 345-027-0240.

3 4 **345-027-0055(adopt)**

5 **Written Evaluations for Changes Not Requiring Amendment**

6 (1) If the certificate holder concludes that a proposed change to the facility does not require an
7 amendment to the site certificate, the certificate holder must complete a written evaluation
8 if the change:

9 (a) Could be included in and governed by the site certificate, but the certificate holder has
10 concluded the change is not described in 345-027-0050; or

11 (b) Is exempt from requiring an amendment under 345-027-0053.

12 (2) The written evaluation must explain why an amendment is not required, must be
13 completed before implementing any change, and must be included in the next semiannual
14 construction progress report or the Facility Modification Report required under 345-026-
15 0080. The written evaluation must be retained for the life of the facility.

16 (3) The Department of Energy may, at any time, inspect the changes made to the facility and
17 may inspect the certificate holder's written evaluation concluding that the change did not
18 require an amendment.

19 (4) When the certificate holder implements a change without an amendment, the Department
20 may initiate an enforcement action as described in Division 29 if the Department
21 determines the change required an amendment to the site certificate.

22 23 **345-027-0057(adopt)**

24 **Amendment Determination Request**

25 (1) The certificate holder may request a written determination of whether an amendment to
26 the site certificate is required by OAR 345-027-0050 by submitting the following information
27 in a written request to the Department of Energy:

28 (a) A narrative description of the proposed change(s);

29 (b) Maps and/or geospatial data layers representing the effects and/or location of the
30 proposed change;

31 (c) The certificate holder's evaluation of whether the proposed change requires an
32 amendment as described in OAR 345-027-0050 or OAR 345-027-0053; and

33 (d) Any additional information the certificate holder believes will assist the Department's
34 evaluation.

35 (2) Upon receiving a request for a written determination described in section (1), the
36 Department shall, as promptly as possible, issue a written determination indicating whether
37 the proposed change requires an amendment or refer the request to the Council for a
38 written Council determination.

39 (3) At the request of the certificate holder, the Department must refer its determination to the
40 Council for concurrence, modification or rejection.

41
42

345-027-0059(adopt)**Pre-Amendment Conference**

- (1) Prior to submitting a preliminary request for amendment to the site certificate as described in OAR 345-027-0060, the certificate holder may request a pre-amendment conference with the Department of Energy to discuss the scope, timing, and applicable laws and Council standards associated with the request for amendment. If the certificate holder is requesting an amendment to add area to the site boundary, the certificate holder must request a pre-amendment conference before submitting a preliminary request for amendment.
- (2) A pre-amendment conference request must be in writing and must include a description of the proposed change and, if applicable, maps or geospatial data layers representing the location of the proposed change.
- (3) Upon receipt of a request as described in section (1), the Department must, as promptly as possible, set a date and time for a pre-amendment conference.

345-027-0060(amend)**Preliminary Request to Amend Certificate for Amendment**

- (1) To request an amendment ~~of a~~ to the site certificate, required by OAR 345-027-0050(3) – (5), the certificate holder shall submit a written preliminary request for amendment to the Department of Energy that includes the ~~information described in section (2) and the~~ following:
- (a) ~~(a)~~ The name of the facility, the name and mailing address of the certificate holder, and the name, mailing address, email address and phone number of the individual responsible for submitting the request.
- ~~(b) A description of the facility including its location and other information relevant to the proposed change.~~
- ~~(b) (c)~~ A detailed description of the proposed change and the certificate holder's analysis, including:
- (A) a description of how the proposed change affects the facility,
- (B) a description of how the proposed change under the criteria of OAR 345-027-0050(4) affects those resources or interests protected by applicable laws and Council standards, and
- (C) (d) the specific location of the proposed change, and any updated maps and/or geospatial data layers relevant to the proposed change.
- (c) References to any specific Division 21 information that may be required for the Department to make its findings.
- (d) The specific language of the site certificate, including affected conditions, that the certificate holder proposes to change, add or delete by ~~an~~ through the amendment.
- (e) A list of the Council standards relevant and all other laws - including statutes, rules and ordinances - applicable to the proposed change. (f) An, and an analysis of whether the facility, with the proposed change, would comply with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances if ~~the~~ those applicable laws and Council amends the site certificate as requested standards. For the purpose of this rule, a law, ~~rule~~ or ordinance Council

1 standard is “applicable” if the Council would apply or consider the law, ~~rule~~ or
 2 ~~ordinance~~ Council standard under OAR 345-027-~~0070(10)~~-0071(2).

3 ~~(f)~~ ~~(g)~~ An updated list of the owners of property located within or adjacent to the site of
 4 the facility, as described in OAR 345-021-0010(1)(f).

5 ~~(2)~~ ~~(2)~~ ~~In a request to amend a~~ For any Council standard that requires evaluation of impacts
 6 within an analysis area, the analysis area shall be the larger of either the study area(s) as
 7 defined in OAR 345-001-0000(59) or the analysis area(s) described in the project order for
 8 the application for site certificate, the certificate holder shall provide the information
 9 described in applicable subsections of OAR 345-021-0000 and OAR 345-021-0010, unless
 10 otherwise approved in writing by the Department following a pre-amendment conference.

11 ~~(2)~~ ~~(3)~~ The certificate holder may incorporate, by specific reference ~~relevant information that the~~
 12 ~~certificate holder has,~~ evidence previously submitted to the Department ~~or in the~~
 13 application for site certificate or previous request for amendment, or evidence that is
 14 otherwise included in the Department’s ~~administrative~~ record on the facility.

15 ~~(3)~~ ~~Before submitting a request to amend a site certificate, the certificate holder may prepare a~~
 16 ~~draft request and may confer with the Department about the content of the request. Although~~
 17 ~~the Council does not require the certificate holder to prepare a draft request and confer with~~
 18 ~~the Department, the Council recommends that the certificate holder follow this procedure.~~

19 ~~(4)~~ ~~The certificate holder shall submit an original and two printed copies of the amendment~~
 20 ~~request to the Department. Upon a request by the Department, the certificate holder must~~
 21 ~~submit printed copies of the amendment request for members of the Council. In addition to the~~
 22 ~~printed copies, the certificate holder shall submit the full amendment request in a non-copy-~~
 23 ~~protected electronic format acceptable to the Department. The certificate holder shall provide~~
 24 ~~additional copies of the amendment request to the Department upon request and copies or~~
 25 ~~access to copies to any person requesting copies. If requested by the Department, the~~
 26 ~~certificate holder shall send copies of the request to persons on a mailing list provided by the~~
 27 ~~Department.~~

29 345-027-0063(adopt)

30 Determination of Completeness for a Request for Amendment

31 (1) Until the Department of Energy determines the request for amendment to the site
 32 certificate is complete, it is a preliminary request for amendment. After receiving a
 33 preliminary request for amendment, the Department may seek comments from reviewing
 34 agencies to determine whether that request is complete.

35 (2) Unless the certificate holder agrees to additional time, within 60 days after receipt of a
 36 preliminary request for amendment, the Department shall notify the certificate holder
 37 whether the request for amendment is complete. In the notification, the Department shall:

38 (a) State that the request for amendment is complete; or

39 (b) State that the request for amendment is incomplete and:

40 (A) Describe any additional information needed to complete the request for
 41 amendment to the extent known to the Department at the time of the notification,
 42 including identification of applicable laws and Council standards not addressed in
 43 the preliminary request for amendment,

1 (B) Ask the certificate holder to submit the additional information by the due dates
 2 described in section (4), and

3 (C) Estimate the additional time the Department will need to make a determination of
 4 completeness following the submittal of the additional information by the certificate
 5 holder.

6 (3) If the Department does not notify the certificate holder as described in section (2), the
 7 request for amendment is deemed complete 60 days after receipt of a preliminary request
 8 for amendment. Otherwise, the request for amendment is complete as determined under
 9 section (5).

10 (4) The Department may specify a date by which the certificate holder must submit additional
 11 information needed to complete the request for amendment. If follow-up requests for
 12 additional information are needed, the Department may specify dates by which the
 13 certificate holder must submit the information. At the request of the certificate holder, the
 14 Department may allow additional time for submission of the information. If the certificate
 15 holder does not submit the information by the deadline specified by the Department,
 16 including any allowed extension, the Council may reject the preliminary request for
 17 amendment. The rejection of a preliminary request for amendment is subject to appeal
 18 under ORS 469.403(3).

19 (5) A request for amendment is complete when the Department finds that the certificate holder
 20 has submitted information adequate for the Council to make findings or impose conditions
 21 on all applicable laws and Council standards. The Department shall notify the certificate
 22 holder when the Department finds that the request for amendment is complete.

23 (6) After receiving notification from the Department that the preliminary request for
 24 amendment is complete, the Department may require the certificate holder to prepare a
 25 consolidated request for amendment that includes all revisions to the preliminary request
 26 for amendment and all additional information requested by the Department before the
 27 determination of completeness. Upon a request by the Department, the certificate holder
 28 shall submit paper and non-copy-protected electronic copies of the consolidated request
 29 for amendment to the Department as specified by the Department.

30 (7) If, after a determination that a request for amendment is complete, the Department
 31 identifies a need for additional information during its review of the request for amendment,
 32 the Department may request additional information from the certificate holder.

34 **345-027-0065(adopt)**

35 **Draft Proposed Order for a Request for Amendment**

36 (1) Within 15 days after a request for amendment to the site certificate described in OAR 345-
 37 027-0050(3) – (5) or a request for amendment to apply later-adopted laws described in OAR
 38 345-027-0090 is determined to be complete, the Department of Energy shall:

39 (a) Send notice to the certificate holder specifying a date for issuance of a draft proposed
 40 order that is no later than 120 days after the date of the notice.

41 (b) Post an announcement on the Department’s website to notify the public that a complete
 42 request for amendment has been received. The announcement shall include:

43 (A) A copy of the complete request for amendment;

1 (B) The date the draft proposed order will be issued, as specified in the notice required
 2 by subsection (1)(a); and

3 (C) A statement that the public comment period begins upon issuance of the draft
 4 proposed order.

5 (2) No later than the date specified in the notice required by subsection (1)(a), the Department
 6 shall issue a draft proposed order recommending approval, modification, or denial of the
 7 requested amendment. The Department may issue the draft proposed order at a later date,
 8 but the Department shall, no later than the date the Department has specified in the notice
 9 required by subsection (1)(a), notify the certificate holder in writing of the reasons for the
 10 delay. The draft proposed order may include, but is not limited to draft proposed findings of
 11 fact, conclusions of law, and conditions concerning the facility's compliance with applicable
 12 laws and Council Standards.

13
 14 **345-027-0067(adopt)**

15 **Public Comment and Hearing on the Draft Proposed Order for a Request for Amendment**

16 (1) After issuance of the draft proposed order as described in OAR 345-027-0065, the Council
 17 shall conduct a public hearing on the request for amendment to the site certificate in the
 18 vicinity of the facility. The public hearing must be held at least 20 days after the draft
 19 proposed order is issued. The public hearing is not a contested case hearing.

20 (2) Concurrent with the issuance of the draft proposed order as described in OAR 345-027-
 21 0065, the Department of Energy shall:

22 (a) Send the notice described in section (3) of this rule by mail or email to:

23 (A) Persons on the Council's general mailing list as defined in OAR 345-011-0020;

24 (B) Persons on any special mailing list established for the facility;

25 (C) The reviewing agencies as defined in OAR 345-001-0010(52); and

26 (D) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F,

27 (b) Post the complete request for amendment, draft proposed order, and the notice of the
 28 draft proposed order and public hearing on the Department website, and

29 (c) Make physical copies of the draft proposed order available to the public for inspection.

30 (3) Notice of the complete request for amendment, draft proposed order and public hearing
 31 shall include:

32 (a) A description of the facility and the facility's general location.

33 (b) The date, time and location of the public hearing described in this rule.

34 (c) The name, address, email address and telephone number of the Department
 35 representative to contact for additional information.

36 (d) Addresses of the physical location(s) and the website where the public may review
 37 copies of the complete request for amendment and draft proposed order.

38 (e) The deadline for the public to submit written comments to be included in the record of
 39 the public hearing and how such comments should be submitted.

40 (f) A statement that:

41 (A) A complete request for amendment has been received and reviewed by the
 42 Department.

43 (B) The Department has issued a draft proposed order.

1 (C) To raise an issue on the record of the public hearing, a person must raise the issue in
2 person at the public hearing or in a written comment submitted after the date of the
3 notice of the public hearing and received by the Department before the close of the
4 record of the public hearing.

5 (D) A person's failure to raise an issue in person or in writing on the record of the public
6 hearing precludes the Council's consideration of whether to grant that person's
7 subsequent contested case request.

8 (E) Failure to raise an issue with sufficient specificity to afford the Council, the
9 Department, and the certificate holder an opportunity to respond to the issue
10 precludes the Council from considering whether that issue justifies a contested case
11 proceeding.

12 (F) To raise an issue with sufficient specificity, a person must present facts, on the
13 record of the public hearing, that support the person's position on the issue.

14 (G) The Council will not accept or consider any further public comment on the request
15 for amendment or on the draft proposed order after the close of the record of the
16 public hearing.

17 (4) During the public hearing, the Department shall explain the amendment process, including
18 the means and opportunities for the general public to participate in the process. The
19 Department may provide this explanation by a written handout.

20 (5) At the commencement of the public hearing, the presiding officer shall read aloud the
21 following:

22 (a) A person who intends to request a contested case on the proposed order for a site
23 certificate amendment must comment in person or in writing on the record of the public
24 hearing.

25 (b) A person who intends to raise an issue that may be the basis for granting a contested
26 case proceeding must raise that issue on the record of the public hearing with sufficient
27 specificity to afford the Council, the department and the certificate holder an adequate
28 opportunity to respond to the issue. To raise an issue with sufficient specificity, a person
29 must present facts, on the record of the public hearing, that support the person's
30 position on the issue.

31 (6) At the public hearing, any person may present information regarding the pending request
32 for amendment without administration of an oath. The presiding officer shall record all
33 presentations made during the public hearing. The presentations are part of the decision
34 record for the request for amendment.

35 (7) Following the close of the record of the public hearing on the draft proposed order, the
36 Council shall review the draft proposed order, shall consider all comments received on the
37 record of the hearing, and may provide comments to the Department regarding the draft
38 proposed order. When the Council meets to review a draft proposed order, the Council
39 does not permit the certificate holder, reviewing agencies or the public to comment on any
40 issue that may be the basis for a contested case request.

41
42

1 **345-027-0069(adopt)**

2 **Proposed Order, Requests for Contested Case and Council's Final Decision**

- 3 (1) No later than 30 days after the Council has reviewed the draft proposed order and
4 considered all comments received on the record of the public hearing under 345-027-0067,
5 the Department of Energy shall issue a proposed order recommending approval,
6 modification or denial of the request(s) for amendment to the site certificate. The
7 Department must consider any oral comments made at the public hearing, written
8 comments received before the close of the record of the public hearing, agency
9 consultation, and any Council comments. The Department may issue the proposed order at
10 a later date, but the Department shall, no later than 30 days after the Council has reviewed
11 the draft proposed order and considered all comments received on the record of the public
12 hearing, notify the certificate holder in writing of the reasons for the delay.
- 13 (2) Concurrent with issuing the proposed order, the Department shall issue public notice of the
14 proposed order by posting public notice as an announcement on its website and by sending
15 public notice by mail or email to:
16 (a) Persons on the Council's general mailing list as defined in OAR 345-011-0020,
17 (b) Persons on any special list established for the facility,
18 (c) The reviewing agencies as defined in OAR 345-001-0010(52), and
19 (d) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.
- 20 (3) Notice of the proposed order shall include:
21 (a) A description of the facility and the facility's general location.
22 (b) A description of the process for requesting a contested case.
23 (c) The physical and website addresses of where the public may review copies of the
24 proposed order.
25 (d) The name, address, email address and telephone number of the Department
26 representative to contact for more information.
- 27 (4) On the same date the notice of proposed order as described in section (2) is issued, the
28 Department shall send a notice of the opportunity to request a contested case to the
29 certificate holder and to all persons who commented in person or in writing on the record
30 of the public hearing as described in OAR 345-027-0067. The notice shall include the
31 deadline for requesting a contested case and restatements of sections (5), (6), (7), (8) and
32 (9).
- 33 (5) Only those persons, including the site certificate holder, who commented in person or in
34 writing on the record of the public hearing described in OAR 345-027-0067 may request a
35 contested case proceeding on the proposed order for an amendment to the site certificate.
36 To properly raise an issue in a request for a contested case proceeding on the proposed
37 order for an amendment, the issue must be within the jurisdiction of the Council, and the
38 person must have raised the issue in person or in writing on the record of the public
39 hearing, unless the Department of Energy did not follow the requirements of OAR 345-027-
40 0067, or unless the action recommended in the proposed order differs materially from the
41 draft proposed order, including any recommended conditions of approval, in which case the
42 person may raise only new issues within the jurisdiction of the Council that are related to
43 such differences. If a person has not raised an issue at the public hearing with sufficient
44 specificity to afford the decision maker an opportunity to respond to the issue, the Council

1 shall not grant a contested case proceeding for that issue. To have raised an issue with
2 sufficient specificity, the person must have presented facts at the public hearing that
3 support that person's position on the issue.

4 (6) Contested case requests must be submitted in writing and must be received by the
5 Department by a specified deadline that is at least 30 days from the date of notice in
6 section (4). Contested case requests must include:

7 (a) The person's name, mailing address and email address and any organization the
8 person represents;

9 (b) A short and plain statement of the issue or issues the person desires to raise in a
10 contested case proceeding;

11 (c) A statement that describes why the Council should find that the requester properly
12 raised each issue, as described in section (7), including a specific reference to the
13 person's prior comments to demonstrate that the person raised the specific issue or
14 issues on the record of the public hearing, if applicable;

15 (d) A statement that describes why the Council should determine that each identified
16 issue justifies a contested case, under the evaluation described in section (9).

17 (e) A detailed description of the person's interest in the proceeding and how that interest
18 may be affected by the outcome of the proceeding.

19 (f) Name and address of the person's attorney, if any;

20 (g) A statement of whether the person's request to participate in a contested case is as a
21 party or a limited party, and if as a limited party, the precise area or areas in which
22 participation is sought;

23 (h) If the person seeks to protect a personal interest in the outcome of the proceeding, a
24 detailed statement of the person's interest, economic or otherwise, and how such
25 interest may be affected by the results of the proceeding;

26 (i) If the person seeks to represent a public interest in the results of the proceeding, a
27 detailed statement of such public interest, the manner in which such public interest
28 will be affected by the results of the proceeding, and the person's qualifications to
29 represent such public interest; and

30 (j) A statement of the reasons why others who commented on the record of the public
31 hearing cannot adequately represent the interest identified in subsections (h) or (i).

32 (7) Before considering whether an issue justifies a contested case proceeding under section (9),
33 the Council must determine that the person requesting a contested case commented in
34 person or in writing on the record of the public hearing and properly raised each issue
35 included in the request. To determine that a person properly raised each issue included in
36 the request, the Council must find that:

37 (a) The person making the contested case request raised the issue on the record of the
38 public hearing described in OAR 345-027-0067 with sufficient specificity to afford the
39 Council, the Department and the certificate holder an adequate opportunity to respond
40 to the issue;

41 (b) The Department did not follow the requirements of OAR 345-027-0067; or

42 (c) If the action recommended in the proposed order, including any recommended
43 conditions of approval, differs materially from the action recommended in the draft

1 proposed order, the contested case request identified new issues that are related to
2 such material differences.

3 (8) If the Council finds that the person requesting a contested case failed to comment in person
4 or in writing on the record of the public hearing or failed to properly raise any issue, as
5 described in section (7), the Council must deny that person's contested case request. If the
6 Council finds that the person requesting a contested case commented in person or in
7 writing on the record of the public hearing and properly raised one or more issues, the
8 Council's determination of whether an issue justifies a contested case, as described in
9 section (9), shall be limited to those issues the Council finds were properly raised.

10 (9) After identifying the issues properly raised the Council shall determine whether any properly
11 raised issue justifies a contested case proceeding on that issue. To determine that an issue
12 justifies a contested case proceeding, the Council must find that the request raises a
13 significant issue of fact or law that may affect the Council's determination that the facility,
14 with the change proposed by the amendment, meets the applicable laws and Council
15 standards included in chapter 345 divisions 22, 23 and 24. If the Council does not have
16 jurisdiction over the issue raised in the request, the Council must deny the request.

17 (10) The Council must take one of the following actions when determining if a request
18 identifying one or more properly raised issues justifies a contested case proceeding:
19 (a) If the Council finds that the request identifies one or more properly raised issues that
20 justify a contested case proceeding, the Council shall conduct a contested case
21 proceeding according to the applicable provisions of OAR 345-015-0012 to -0014 and
22 345-015-0018 to -0085. The Council shall identify the contested case parties and shall
23 identify the issues each contested case party may participate on. The parties to a
24 contested case proceeding shall be limited to those persons who commented on the
25 record of the public hearing and who properly raised issues in their contested case
26 request that the Council found sufficient to justify a contested case, except that the
27 certificate holder is an automatic party to a contested case. The issues a party to a
28 contested case proceeding may participate on shall be limited to those issues that party
29 properly raised in its contested case request that the Council found sufficient to justify a
30 contested case, except that the certificate holder may participate on any issue the
31 Council found sufficient to justify a contested case proceeding.

32 (b) If the Council finds that the request identifies one or more properly raised issues that an
33 amendment to the proposed order, including modification to conditions, would settle in
34 a manner satisfactory to the Council, the Council may deny the request as to those
35 issues and direct the Department to amend the proposed order and send a notice of the
36 amended proposed order to the persons described in section (4). Only the certificate
37 holder and those persons who commented on the record of the hearing may, in a
38 writing received by the Department within 30 days after the Department issues the
39 notice of the amended proposed order, request a contested case proceeding limited to
40 issues related to the amendment to the proposed order. As described in section (9), the
41 Council shall determine whether any issue identified in the request for a contested case
42 proceeding justifies a contested case proceeding. A person's contested case request
43 under this subsection shall include:

44 (A) The person's name, mailing address and email address;

1 (B) A statement of the contested issues related to the amendment to the proposed
 2 order, including facts believed to be at issue; and

3 (C) A statement that describes why the Council should find an issue justifies a contested
 4 case, as described in section (8).

5 (c) If the Council finds that the request does not identify a properly raised issue that
 6 justifies a contested case proceeding, the Council shall deny the request. In a written
 7 order denying the request, the Council shall state the basis for the denial. The Council
 8 shall then adopt, modify or reject the proposed order based on the considerations
 9 described in OAR-345-027-0071. In a written order the Council shall either grant or deny
 10 issuance of an amended site certificate. If the Council grants issuance of an amended
 11 site certificate, the Council shall issue an amended site certificate, which is effective
 12 upon execution by the Council Chair and by the certificate holder.

13 (11) If there is no request for a contested case proceeding as described in section (6) or
 14 subsection (10)(b), the Council, may adopt, modify or reject the proposed order based on
 15 the considerations described in OAR 345-027-0071. In a written order, the Council shall
 16 either grant or deny issuance of an amended site certificate. If the Council grants issuance
 17 of an amended site certificate, the Council shall issue an amended site certificate, which is
 18 effective upon execution by the Council Chair and by the certificate holder.

19 (12) Judicial review of the Council's final order either granting or denying an amended site
 20 certificate shall be as provided in ORS 469.403.

21
 22 **OAR 345-027-0071 Scope of Council's Review(adopt)**

23 (1) In making a decision to grant or deny issuance of an amended site certificate, the Council
 24 shall apply the applicable laws and Council standards required under section (2) and in
 25 effect on the dates described in section (3).

26 (2) To issue an amended site certificate, the Council shall determine that the preponderance of
 27 evidence on the record supports the following conclusions:

28 (a) For a request for amendment proposing to add new area to the site boundary, the
 29 portion of the facility within the area added to the site by the amendment complies with
 30 all laws and Council standards applicable to an original site certificate application.

31 (b) For a request for amendment to extend the deadlines for beginning or completing
 32 construction, after considering any changes in facts or law since the date the current
 33 site certificate was executed, the facility complies with all laws and Council standards
 34 applicable to an original site certificate application. However, for requests to extend
 35 completion deadlines, the Council need not find compliance with an applicable law or
 36 Council standard if the Council finds that:

37 (A) The certificate holder has spent more than 50 percent of the budgeted costs on
 38 construction of the facility;

39 (B) The inability of the certificate holder to complete the construction of the facility by
 40 the deadline in effect before the amendment is the result of unforeseen
 41 circumstances that are outside the control of the certificate holder;

42 (C) The standard, if applied, would result in an unreasonable financial burden on the
 43 certificate holder; and

1 (D) The Council does not need to apply the standard to avoid a significant threat to the
 2 public health, safety or the environment;

3 (c) For any other requests for amendment not described above, the facility, with the
 4 proposed changes, complies with the applicable laws or Council standards that protect a
 5 resource or interest that could be affected by the proposed changes.

6 (d) For all requests for amendment, the amount of the bond or letter of credit required
 7 under OAR 345-022-0050 is adequate.

8 (3) In making the findings required to grant an amendment under section (2), the Council shall
 9 apply the applicable law and Council standards in effect on the following dates:

10 (a) For the applicable substantive criteria under the Council's land use standard, as
 11 described in OAR 345-022-0030, the date the certificate holder submitted the request
 12 for amendment, and

13 (b) For all other applicable laws and Council standards, the date the Council issues the
 14 amended site certificate.

15
 16 **345-027-0070(repeal)**

17 **Review of a Request for Amendment**

18 ~~Except as specified in OAR 345-027-0080, the Council shall review a request for amendment of~~
 19 ~~a site certificate as follows:~~

20 ~~—(1) Within 15 days after receiving a request to amend a site certificate, the Department of~~
 21 ~~Energy shall determine whether the amendment requires extended review based on the~~
 22 ~~criteria in section (2) and:~~

23 ~~—(a) Distribute copies of the request, or instruct the certificate holder to distribute copies~~
 24 ~~of the request, to the persons on a distribution list that includes the reviewing agencies as~~
 25 ~~defined in OAR 345-001-0010 and that may include additional persons, with a request for~~
 26 ~~comments on the request by a specified date. The distribution may be done by courier delivery~~
 27 ~~or mailing of printed copies or, with the approval of the Department, any form of electronic~~
 28 ~~delivery.~~

29 ~~—(b) Send a notice of the amendment request by mail or email to all persons on the~~
 30 ~~Council's general mailing list as defined in OAR 345-011-0020, to any special list established for~~
 31 ~~the facility and to the updated property owner list supplied by the certificate holder under 345-~~
 32 ~~027-0060(1)(g) and specify a date by which comments on the request are due.~~

33 ~~—(c) Post an announcement on the Department's website to notify the public that an~~
 34 ~~amendment request has been received.~~

35 ~~—(d) Send a notice by mail or email to the certificate holder specifying a date for issuance~~
 36 ~~of a proposed order. The Department shall specify a date that is no later than 60 days after the~~
 37 ~~date of the notice unless the Department has determined that the amendment requires~~
 38 ~~extended review. For extended review, the Department shall explain the basis of its~~
 39 ~~determination and specify a date that is not more than 180 days after the date of the notice.~~
 40 ~~Within 10 days after the Department sends notification that an amendment requires extended~~
 41 ~~review, the certificate holder may request Council review of the determination. Upon a request~~
 42 ~~for Council review, the Department shall refer its determination to the Council for concurrence,~~
 43 ~~modification or rejection.~~

44 ~~—(2) The Department may determine that an amendment requires extended review if:~~

~~1 (a) The certificate holder requests extended review;
 2 (b) The Department finds that the amendment request does not contain the information
 3 required by OAR 345-027-0060 or does not contain information sufficient for the Department
 4 to prepare a proposed order;
 5 (c) The Department needs to hire a consultant to assist in reviewing the request;
 6 (d) The amendment:
 7 (A) Would require construction on land zoned residential or exclusive farm use;
 8 (B) Would require construction in a zone for which the use is not permitted;
 9 (C) Would require construction on land that may qualify as Habitat Category 1 or 2
 10 land as described in OAR 635-415-0025;
 11 (D) Would result in incremental carbon dioxide emissions that the certificate holder
 12 elects to offset, in compliance with the applicable carbon dioxide emissions standard, by a
 13 means other than by payments described under OAR 345-024-0560(3), 345-024-0600(3) and (4)
 14 or 345-024-0630(2), (4) and (5); or
 15 (E) Could require the Council to determine, according to OAR 345-022-0000(2), that
 16 the overall public benefits of the facility outweigh any adverse effects on a resource or interest
 17 that is protected by an applicable standard the facility would not meet if the amendment is
 18 approved; or
 19 (e) The Department anticipates a high volume of public comment.
 20 (3) The Office may hold one or more public meetings during the review of a request for
 21 amendment of the site certificate.
 22 (4) Except as otherwise provided in this section, no later than the date the Department has
 23 specified in the notice described in subsection (1)(d), the Department shall issue a proposed
 24 order, recommending approval, modification or disapproval of the requested amendment. If
 25 the Department needs additional time to prepare the proposed order, the Department may
 26 issue the proposed order at a later date, but the Department shall, no later than the date the
 27 Department has specified in the notice, notify the certificate holder in writing of the
 28 circumstances that justify the delay.
 29 (5) After issuing the proposed order, the Department shall send a notice of the proposed
 30 order by mail or email to the persons on the Council's general mailing list as defined in OAR
 31 345-011-0020, to any special list established for the facility, to the updated property owner list
 32 supplied by the certificate holder under 345-027-0060(1)(g) and to the distribution list
 33 described in subsection (1)(a). In the notice, the Department shall state that all comments must
 34 be submitted in writing and must be received by the Department by a specified deadline that is
 35 at least 30 days from the date of the notice. The Department shall post an announcement on its
 36 website to notify the public of the issuance of the proposed order.
 37 (6) Any person may, by written request submitted to the Department no later than the
 38 deadline described in section (5), ask the Council to hold a contested case proceeding on the
 39 proposed order. For the purpose of this rule, the request is submitted when it is received by the
 40 Department. In the request, the person shall provide a description of the issues to be
 41 contested, a statement of the facts believed to be at issue and the person's mailing address and
 42 email address.
 43 (7) To determine that an issue justifies a contested case proceeding under section (8), the
 44 Council must find that the request raises a significant issue of fact or law that may affect the~~

1 ~~Council's determination that the facility, with the change proposed by the amendment, meets~~
2 ~~an applicable standard. If the Council finds that the request would not affect the Council's~~
3 ~~determination if the alleged facts were found to be true but that those facts could affect a site~~
4 ~~certificate condition, the Council may deny the request and may adopt appropriate conditions.~~
5 ~~If the Council does not have jurisdiction over the issue raised in the request, the Council must~~
6 ~~deny the request.~~

7 ~~—(8) The Council shall determine whether any issue identified in a request for a contested~~
8 ~~case proceeding justifies a contested case proceeding, and:~~

9 ~~—(a) If the Council finds that the request identifies one or more issues that justify a~~
10 ~~contested case proceeding, the Council shall conduct a contested case proceeding according to~~
11 ~~the applicable provisions of OAR 345-015-0012 to 345-015-0085 limited to the issues that the~~
12 ~~Council found sufficient to justify the proceeding.~~

13 ~~—(b) If the Council finds that the request identifies one or more issues that an~~
14 ~~amendment of the proposed order would settle in a manner satisfactory to the Council, the~~
15 ~~Council may deny the request as to those issues and direct the Department to amend the~~
16 ~~proposed order and send a notice of the amended proposed order to the persons described in~~
17 ~~section (5). Any person may, by written request submitted to the Department within 30 days~~
18 ~~after the Department issues the notice of the amended proposed order, ask the Council to hold~~
19 ~~a contested case proceeding limited to issues raised by the amendment to the proposed order.~~
20 ~~For the purpose of this rule, the request is submitted when it is received by the Department. In~~
21 ~~the request, the person shall provide a description of the issues to be contested, a statement of~~
22 ~~the facts believed to be at issue and the person's mailing address and email address. As~~
23 ~~described in this section, the Council shall determine whether any issue identified in the~~
24 ~~request for a contested case proceeding justifies a contested case proceeding.~~

25 ~~—(c) If the Council finds that the request does not identify any issue that justifies a~~
26 ~~contested case proceeding, the Council shall deny the request. In a written order denying the~~
27 ~~request, the Council shall state the basis for the denial. The Council shall then adopt, modify or~~
28 ~~reject the proposed order based on the considerations described in section (10). In a written~~
29 ~~order, the Council shall either grant or deny issuance of an amended site certificate. If the~~
30 ~~Council grants issuance of an amended site certificate, the Council shall issue an amended site~~
31 ~~certificate, which is effective upon execution by the Council Chair and by the applicant.~~

32 ~~—(9) If there is no request for a contested case proceeding as described in section (6) or~~
33 ~~subsection (8)(b), the Council, may adopt, modify or reject the proposed order based on the~~
34 ~~considerations described in section (10). In a written order, the Council shall either grant or~~
35 ~~deny issuance of an amended site certificate. If the Council grants issuance of an amended site~~
36 ~~certificate, the Council shall issue an amended site certificate, which is effective upon execution~~
37 ~~by the Council Chair and by the applicant.~~

38 ~~—(10) In making a decision to grant or deny issuance of an amended site certificate, the~~
39 ~~Council shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in~~
40 ~~effect on the date the certificate holder submitted the request for amendment and all other~~
41 ~~state statutes, administrative rules, and local government ordinances in effect on the date the~~
42 ~~Council makes its decision. The Council shall consider the following:~~

~~1 (a) For an amendment that would change the site boundary or the legal description of
2 the site, the Council shall consider, for the area added to the site by the amendment, whether
3 the facility complies with all Council standards;~~

~~4 (b) For an amendment that extends the deadlines for beginning or completing
5 construction, the Council shall consider:~~

~~6 (A) Whether the Council has previously granted an extension of the deadline;~~

~~7 (B) Whether there has been any change of circumstances that affects a previous
8 Council finding that was required for issuance of a site certificate or amended site certificate;
9 and~~

~~10 (C) Whether the facility complies with all Council standards, except that the Council
11 may choose not to apply a standard if the Council finds that:~~

~~12 (i) The certificate holder has spent more than 50 percent of the budgeted costs
13 on construction of the facility;~~

~~14 (ii) The inability of the certificate holder to complete the construction of the
15 facility by the deadline in effect before the amendment is the result of unforeseen
16 circumstances that are outside the control of the certificate holder;~~

~~17 (iii) The standard, if applied, would result in an unreasonable financial burden on
18 the certificate holder; and~~

~~19 (iv) The Council does not need to apply the standard to avoid a significant threat
20 to the public health, safety or the environment;~~

~~21 (c) For any amendment not described above, the Council shall consider whether the
22 amendment would affect any finding made by the Council in an earlier order.~~

~~23 (d) For all amendments, the Council shall consider whether the amount of the bond or letter of
24 credit required under OAR 345-022-0050 is adequate.~~

345-027-0080(repeal)

Review of a Request by a Certificate Holder for Expedited Amendment

~~28 (1) A certificate holder may ask the Council Chair to grant expedited review of an
29 amendment request. The certificate holder shall submit a request for expedited review to the
30 Department of Energy in writing and, in addition, the certificate holder shall submit the full
31 amendment request in a non-copy-protected electronic format acceptable to the Department.
32 The certificate holder shall include in the request:~~

~~33 (a) The information listed in OAR 345-027-0060(1) and (2), and~~

~~34 (b) Reasons why the certificate holder needs expedited review of its request and an
35 explanation of why the need for expedited review arose and could not have reasonably been
36 foreseen by the certificate holder.~~

~~37 (2) The Chair may grant a request for expedited review if the Chair finds that a delay would
38 unduly harm the certificate holder and if the facility, with the proposed change, would not
39 likely result in a significant new adverse impact. If the Chair decides not to grant the request for
40 expedited review, the Chair shall issue a written decision as soon as is reasonably practicable. In
41 a written decision denying the request, the Chair shall give an explanation of the reasons for
42 the denial.~~

~~43 (3) Within 7 days after the Chair grants expedited review, the Department shall:~~

1 ~~—— (a) Send copies of the amendment request by mail or email to the reviewing agencies as~~
2 ~~defined in OAR 345-001-0010 and ask those agencies to comment on the request within not~~
3 ~~more than 21 days after the date of the notice.~~

4 ~~—— (b) Send a notice of the amendment request by mail or email to all persons on the~~
5 ~~Council's general mailing list as defined in OAR 345-011-0020, to any special list established for~~
6 ~~the facility and to the updated property owner list supplied by the certificate holder under 345-~~
7 ~~027-0060(1)(g) specifying a date, not more than 21 days after the date of the notice, by which~~
8 ~~comments are due.~~

9 ~~—— (c) Post an announcement of the amendment request on its website.~~

10 ~~—— (4) Within 60 days after the Chair grants expedited review, the Department shall issue a~~
11 ~~proposed order, recommending approval, modification or disapproval of the requested~~
12 ~~amendment. If the Department recommends approval, the Department shall include in the~~
13 ~~proposed order any new or modified conditions it recommends and shall explain why expedited~~
14 ~~Council action was warranted.~~

15 ~~—— (5) The Department shall send a notice of the proposed order by mail or email to the~~
16 ~~persons on the Council's general mailing list, to any special list established for the facility and to~~
17 ~~the updated property owner list supplied by the certificate holder under OAR 345-027-~~
18 ~~0060(1)(g). In addition, the Department shall post the notice on its website. In the notice, the~~
19 ~~Department shall include information on the availability of the proposed order, the date of the~~
20 ~~Council meeting when the Council will consider the proposed order and issue a temporary~~
21 ~~order as described in section (5), a date by which comments on the proposed order are due and~~
22 ~~the deadline for any person to request a contested case proceeding on the Council's temporary~~
23 ~~order.~~

24 ~~—— (6) After considering the proposed order, the Council may issue an order temporarily~~
25 ~~amending the site certificate. In making a decision whether to issue a temporary order under~~
26 ~~this rule, the Council shall consider the factors listed in OAR 345-027-0070(10). The Council shall~~
27 ~~apply the applicable substantive criteria, as described in 345-022-0030, in effect on the date the~~
28 ~~certificate holder submitted the request for amendment and all other state statutes,~~
29 ~~administrative rules, and local government ordinances in effect on the date the Council issues~~
30 ~~the temporary order.~~

31 ~~—— (7) Before implementing any change approved by the Council's temporary order, the~~
32 ~~certificate holder must submit an authorized acknowledgement that the certificate holder~~
33 ~~accepts all terms and conditions of the temporary order. The acknowledgement may be~~
34 ~~submitted to the Department by fax or email if the certificate holder promptly submits a signed~~
35 ~~original to the Department by mail or hand delivery.~~

36 ~~—— (8) Any person may, by written request submitted to the Department within 15 days after~~
37 ~~the date the Council issues the temporary order described in section (5), ask the Council to hold~~
38 ~~a contested case proceeding on the temporary order. For the purpose of this rule, the request~~
39 ~~is submitted when it is received by the Department. In the request, the person shall provide a~~
40 ~~description of the issues to be contested, a statement of the facts believed to be at issue and~~
41 ~~the person's mailing address and email address.~~

42 ~~—— (9) The Council shall determine whether any issue identified in a request for a contested~~
43 ~~case proceeding justifies a contested case proceeding.~~

~~1 (a) If the Council finds that the request identifies one or more issues that justify a
2 contested case proceeding, the Council shall conduct a contested case proceeding according to
3 the applicable provisions of OAR 345-015-0012 to 345-015-0085 limited to the issues that the
4 Council found sufficient to justify the proceeding.~~

~~5 (b) If the Council finds that the request does not identify any issue that justifies a
6 contested case proceeding, the Council shall deny the request. In a written order denying the
7 request, the Council shall state the basis for the denial. The Council shall adopt the temporary
8 order as a final order. In the final order, the Council may modify the language of the temporary
9 order, consistent with due process. In the final order, the Council shall either grant or deny
10 issuance of an amended site certificate. If the Council grants issuance of an amended site
11 certificate, the Council shall issue an amended site certificate, which is effective upon execution
12 by the Council Chair and by the applicant.~~

~~13 (10) If there is no request for a contested case proceeding as described in section (8), the
14 Council shall adopt the temporary order as a final order. In the final order, the Council may
15 modify the language of the temporary order, consistent with due process. In the final order, the
16 Council shall either grant or deny issuance of an amended site certificate. If the Council grants
17 issuance of an amended site certificate, the Council shall issue an amended site certificate,
18 which is effective upon execution by the Council Chair and by the applicant.~~

~~19 (11) The certificate holder shall not abuse this rule by failing to make timely application for an
20 amendment and thus creating the need for expedited review.~~

345-027-0090(amend)

Request by Any Person for Amendment to Apply ~~Subsequent~~Later-Adopted Laws or Rules

(1) Any person may ~~submit to the Department of Energy a request for an~~ amendment of a site certificate to apply a law(s), including local government ordinance, statute ordinances, statutes, rules or Council rulestandards, adopted after the date the site certificate was executed, if the person contends failure to apply the law(s) results in a significant threat to the public health or safety or to the environment. The Department of Energy itself may initiate such a request.

(2) ~~To request~~ an amendment ~~request to apply later-adopted law(s)~~ under this rule, the person shall ~~include~~ submit a preliminary request for amendment to the Department with the information described in 345-027-0060(1)(a),(c),(d) and the following:

~~(a) The name, mailing address, email address and telephone number of the person submitting the request;~~

~~(b) The name and address of the certificate holder;~~

~~(c) Identification of the facility for which the site certificate in question was granted and its location;~~

~~(d)~~ (a) Identification of the local government ordinance, statute or Council rulelaw(s) that the person seeks to apply to the facility; and

(e) The particular facts that the person believes demonstrate that failure to apply the ordinance, statute or rule identified in subsection (d) presentsclearly show a significant threat to the public health ~~or,~~ safety or ~~to~~ the environment; and that requires application of the later adopted law(s).

1 ~~(f) The specific language of the site certificate that the person proposes to change, delete or~~
 2 ~~add by an amendment.~~

3 (3) If the Department receives a preliminary request to amend a site certificate for amendment
 4 to apply later-adopted law(s) as described in this rule from any person other than the
 5 certificate holder, the Department shall send a copy of the request to the certificate holder
 6 ~~with. The transmittal shall include a notice stating the dated deadline~~ by which the certificate
 7 holder must submit a response ~~to the Department. In its response, the certificate holder~~
 8 shall state whether it agrees that there is a clear showing of a significant threat to the public
 9 health, safety or the environment that requires application of the later-adopted law(s).

10 (a) If the certificate holder concludes the later-adopted law(s) should be applied to the
 11 facility, the Council shall review the request to apply later-adopted law(s) as a complete
 12 request for amendment in accordance with section (5).

13 (b) If the certificate holder concludes that the law(s) should not be applied to the facility, or
 14 if the certificate holder does not respond with its conclusion before the specified
 15 deadline, the Department shall ask the Council to determine whether the request
 16 clearly shows a significant threat to the public health, safety or the environment that
 17 requires application of the later-adopted law(s).

18 (A) If the Council determines there is not a clear showing of a significant threat to the
 19 public health, safety or the environment, that requires application of the later
 20 adopted law(s), the Council shall deny the request to apply later-adopted law(s).

21 (B) If the Council determines there is a clear showing of a significant threat to the public
 22 health, safety or the environment that requires application of the later adopted
 23 law(s), the Council shall review the request to apply later-adopted law(s) as a
 24 complete request for amendment in accordance with section (5).

25 (4) A preliminary request for amendment to apply later-adopted law(s) under this rule is
 26 considered a complete request for amendment for purposes of OAR 345-027-0063 on:

27 (a) If the request to apply later-adopted law(s) is made by the certificate holder, the date
 28 the request is received by the Department.

29 (b) If the request to apply later-adopted law(s) is made by a person other than the
 30 certificate holder, and if the certificate holder responds as described in subsection
 31 (3)(a), the date the response described in subsection (3)(a) is received by the
 32 Department.

33 (c) If the request to apply later-adopted law(s) is made by a person other than the
 34 certificate holder, and if the certificate holder responds as described in subsection (3)(b)
 35 or does not respond before the specified deadline under section (3), the date of the
 36 Council's determination under paragraph (3)(b)(B).

37 ~~(4)-(5)~~ After receiving a complete request for amendment under section (4) of this rule, the
 38 Council shall review the request for amendment as described in OAR 345-027-00700065, 345-
 39 027-0067, 345-027-0069 and 345-027-0071, except that:

40 ~~(a) After receiving the certificate holder's response as requested under (3), the Department~~
 41 ~~may ask the Council to determine whether the request demonstrates that failure to~~
 42 ~~apply the ordinance, statute or rule identified in subsection (2)(d) presents a significant~~
 43 ~~threat to the public health or safety or to the environment. If the Council determines~~
 44 ~~that applying the ordinance, statute or rule is not justified by a significant threat to the~~

1 ~~public health or safety or to the environment, then the Council may deny the~~
2 ~~amendment request.~~

3 ~~(b) Within 15 days after receiving the certificate holder's response as requested under (3) or~~
4 ~~within 15 days after a Council determination under (a) that applying the ordinance,~~
5 ~~statute or rule is justified by a significant threat to the public health or safety or to the~~
6 ~~environment, the Department shall determine whether the amendment request~~
7 ~~requires expedited review, based on the criteria in OAR 345-027-0070(2), and shall send~~
8 ~~the notices described in 345-027-0070(1)(a), (b) and (d).~~

9 ~~(a) (c)~~ If the Department recommends approval or ~~modification~~modified approval of the
10 requested amendment, the Department shall include in the proposed order described in
11 OAR 345-027-~~0070(4)~~0069 any new or modified site certificate conditions necessary to
12 assure compliance with the ~~statutes, Council rules, and local government~~
13 ~~ordinances~~law(s) applied to the facility under the proposed order;

14 ~~(b) (d)~~ If the Department in its proposed order recommends approval or
15 ~~modification~~modified approval of the requested amendment, the certificate holder
16 may, by written request submitted to ~~and received by~~ the Department within 30 days
17 after the Department issues the proposed order, ask the Council to hold a contested
18 case proceeding on the proposed order. ~~For the purpose of this rule, the request is~~
19 ~~submitted when it is received by the Department.~~ In the request, the certificate holder
20 shall provide a description of the issues to be contested and a statement of the facts
21 believed to be at issue. If the ~~site~~ certificate holder requests a contested case
22 proceeding, the Council shall conduct a contested case proceeding according to the
23 applicable provisions of OAR 345-015-0012 to ~~0014, and 345-015-0018 to~~ 345-015-
24 0085 limited to the issues stated by the certificate holder; and

25 ~~(c) (e)~~ The Council shall include new conditions in a site certificate amended under this rule
26 only if ~~the certificate holder agrees to the new conditions or~~ the Council finds that the
27 conditions are necessary based upon a clear showing of a significant threat to the public
28 health, safety or the environment.
29

30 **345-027-0100(amend)**

31 **Request for Amendment to Transfer Ownership, Possession or Control of a Site the Facility or** 32 **the Certificate Holder**

33 (1) For the purpose of this rule:

34 (a) A ~~request for amendment to a site certificate to transfer of the site certificate is required~~
35 ~~for a transaction that results in a change in the ownership requires a transfer of the site~~
36 ~~certificate when the person who will have the legal right to, possession and/or control of~~
37 ~~the site or the facility does not have authority under the site certificate to construct,~~
38 ~~operate or retire the facility;~~certificate holder.

39 (b) "~~Transferee~~New owner" means the person ~~who or entity that will become gain~~
40 ~~ownership, possession or control of the new applicant and site facility or the~~ certificate
41 holder.

42 (2) When ~~at~~the certificate holder has knowledge that ~~any transfer of ownership of the facility a~~
43 ~~transaction~~ that requires a transfer of the site certificate ~~as described in section (1)(a)~~ is or
44 may be pending, the certificate holder shall notify the Department of Energy. In the notice,

1 the certificate holder shall include, ~~if known,~~ the name, ~~mailing address~~ and ~~telephone~~
 2 ~~number~~ contact information of the ~~transferee~~ new owner, and the date of the transfer of
 3 ownership. If possible, the certificate holder shall notify the Department at least 60 days
 4 before the date of the transfer of ownership.

5 ~~(3) The transferee~~ (3) A transaction that would require a transfer of the site certificate as
 6 described in subsection (1)(a) does not terminate the transferor's duties and obligations
 7 under the site certificate until the Council approves a transfer request and issues an
 8 amended site certificate. The new owner is not allowed to construct or operate the facility
 9 until an amended site certificate as described in section (10) or a temporary amended site
 10 certificate as described in section (11) becomes effective.

11 (4) To request ~~an amendment to~~ transfer ~~of~~ the site certificate, the ~~transferee~~ new owner shall
 12 submit a written request to the Department that includes the information described in OAR
 13 345-021-0010(1)(a), (d), (f) and (m), a certification that the ~~transferee~~ new owner agrees to
 14 abide by all terms and conditions of the site certificate currently in effect and, if known, the
 15 expected date of the ~~transfer of ownership~~ transaction. If applicable, the ~~transferee~~ new
 16 owner shall include in the request the information described in OAR 345-021-
 17 0010(1)(y)(O)(iv).

18 (5) The Department may require the ~~transferee~~ new owner to submit a written statement from
 19 the current certificate holder, or a certified copy of an order or judgment of a court of
 20 competent jurisdiction, verifying the ~~transferee's~~ new owner's right, subject to the
 21 provisions of ORS Chapter 469 and the rules of this chapter, to possession or control of the
 22 site or the facility.

23 (6) Within 15 days after receiving a request for amendment to transfer ~~at~~ the site certificate, the
 24 Department shall send a notice of the request by mail or email to the reviewing agencies as
 25 defined in OAR 345-001-0010, to all persons on the Council's general mailing list as defined
 26 in OAR 345-011-0020, to any special list established for the facility and to the updated
 27 property owner list submitted by the ~~transferee~~ new owner under ~~subsection~~ section (4). In
 28 the notice, the Department shall describe the transfer request, specify a date by which
 29 comments are due and state that the date of the ~~Council's informational~~ Council's transfer
 30 hearing will be announced on the Department's website.

31 (7) Before acting on the request for amendment to transfer ~~request~~ the site certificate, the
 32 Council shall hold ~~an informational~~ a transfer hearing. The Council shall hold the
 33 ~~informational~~ transfer hearing during a Council meeting and shall provide notice of the
 34 hearing on its meeting agenda, which will be sent by mail or email to the Council's general
 35 mailing list in advance of the meeting. The ~~informational~~ transfer hearing is not a contested
 36 case hearing. During the hearing the Council will accept comments from the public,
 37 reviewing agencies and new owner regarding the new owner's compliance with the Council
 38 standards described in section (8)(a).

39 (8) At the conclusion of the ~~informational~~ transfer hearing or at a later meeting, the Council may
 40 issue an order approving the transfer request if the Council finds that:

41 (a) The ~~transferee~~ new owner complies with the Council standards described in OAR 345-
 42 022-0010, 345-022-0050 and, if applicable, OAR 345-024-0710(1); and

43 (b) The ~~transferee~~ new owner is or will be lawfully entitled to possession or control of the
 44 site or the facility described in the site certificate.

- 1 (9) Except as described in section (12), the Council shall not otherwise change the terms and
 2 conditions of the site certificate in an order approving the transfer request.
- 3 (10) Upon issuing the order described in section (8), the Council shall issue an amended site
 4 certificate that names the transfereenew owner as the new certificate holder or as the new
 5 owner of the certificate holder. The amended site certificate is effective upon execution by
 6 the Council chair and the transfereenew owner. The Council shall issue the amended site
 7 certificate in duplicate counterpart originals and each counterpart, upon signing, will have
 8 the same effect.
- 9 (11) If the Council chair determines that special circumstances justify emergency action, the
 10 Council chair may, upon a written request from the transfereenew owner that includes a
 11 showing that the transfereenew owner can meet the requirements of section (8), issue a
 12 temporary amended site certificate that names the transfereenew owner as the new
 13 certificate holder or as the new owner of the certificate holder. The temporary amended
 14 site certificate is effective upon execution by the Council chair and the transfereenew
 15 owner. The temporary amended site certificate expires when an amended site certificate as
 16 described in section (10) becomes effective or as the Council otherwise orders.

17 ~~(12) The Council may act concurrently on a request to transfer a site certificate and any other~~
 18 ~~amendment request subject to the procedures described in this rule for the transfer request~~
 19 ~~and:~~

20 ~~(a) The procedures described in OAR 345-027-0030 for an amendment to extend construction~~
 21 ~~beginning and completion deadlines.~~

22 ~~(b) The procedures described in OAR 345-027-0090 for an amendment to apply subsequent~~
 23 ~~laws or rules.~~

24 ~~(c) The procedures described in OAR 345-027-0060 and 345-027-0070 for any amendment~~
 25 ~~request not described in (a) or (b).~~

26 **345-027-0110**

27 **Termination of a Site Certificate**

- 28 (1) A certificate holder may apply to the Council to terminate a site certificate at any time,
 29 subject to the requirements of this rule.
- 30 (2) A certificate holder must apply to the Council to terminate a site certificate within two years
 31 following cessation of construction or operation of the facility.
- 32 (3) If the certificate holder fails to apply to the Council to terminate the site certificate and the
 33 Council finds that the certificate holder has permanently ceased construction or operation
 34 of the facility, then the Council may terminate the site certificate according to the
 35 procedure described in OAR 345-~~027-0020~~-025-0006(16).
- 36 (4) In an application for termination of the site certificate, the certificate holder shall include a
 37 proposed final retirement plan for the facility and site. The certificate holder shall submit an
 38 original and two printed copies of the application for termination and the proposed final
 39 retirement plan to the Department. Upon a request by the Department, the certificate
 40 holder must submit printed copies of the application for termination and the proposed final
 41 retirement plan for members of the Council. In addition to the printed copies, the certificate
 42 holder shall submit the full copies of the application for termination and the proposed final
 43 retirement plan in a non-copy-protected electronic format acceptable to the Department.
 44

- 1 (5) In the proposed final retirement plan, the certificate holder shall include:
 2 (a) A plan for retirement that provides for completion of retirement without significant
 3 delay and that protects public health, safety and the environment.
 4 (b) A description of actions the certificate holder proposes to take to restore the site to a
 5 useful, non-hazardous condition, including information on how impacts to fish, wildlife
 6 and the environment would be minimized during the retirement process.
 7 (c) A current detailed cost estimate and a plan for ensuring the availability of adequate
 8 funds for completion of retirement.
 9 (d) An updated list of the owners of property located within or adjacent to the site of the
 10 facility, as described in OAR 345-021-0010(1)(f).
 11 (6) Within 15 days after receiving an application for termination of a site certificate, the
 12 Department of Energy shall:
 13 (a) Send a notice of the application by mail or email to all persons on the Council's general
 14 mailing list as defined in OAR 345-011-0020, to any special list established for the facility
 15 and to the updated property owner list submitted by the certificate holder under
 16 subsection (5) specifying a date by which comments on the application are due.
 17 (b) Send copies of the application for termination by mail or email to the reviewing agencies
 18 as defined in OAR 345-001-0010 and shall ask those agencies to comment by a specified
 19 date.
 20 (c) Post an announcement of the application for termination on the Department's website.
 21 (7) The Council shall review the proposed final retirement plan and shall consider any
 22 comments received from the public and the reviewing agencies. The Council may approve
 23 the proposed final retirement plan or modify the plan to comply with the rules of this
 24 chapter and applicable conditions in the site certificate. The Council shall issue an order
 25 authorizing retirement according to the approved or modified final retirement plan and
 26 subject to any conditions the Council finds appropriate. The Council's order may be
 27 appealed as described in ORS 183.480.
 28 (8) When the Council finds that the certificate holder has completed the retirement of the
 29 facility according to the Council's order authorizing retirement, the Council shall issue an
 30 order terminating the site certificate.
 31 (9) When the Council finds that the site certificate has expired as described in OAR 345-027-
 32 ~~00000013~~, the Council shall issue an order terminating the site certificate.

Department of Energy Approval of Gas Storage Testing Pipelines

345-027-0210

General

- 37 (1) A person shall not construct a gas storage testing pipeline unless the certificate holder of the
 38 Council certified facility to which the pipeline would connect obtains, before construction,
 39 the approval of the Department of Energy for the construction, operation and retirement of
 40 the proposed pipeline as required under ORS 469.405(3).
 41 (2) For the purposes of OAR 345-027-0210 through 345-027-0240:
 42 (a) "Gas storage testing pipeline" means a pipeline, but not a temporary pipeline, that is less
 43 than 16 inches in diameter and less than five miles in length, that is used to test or

- 1 maintain an underground gas storage reservoir and that would connect to a Council
 2 certified facility if the storage reservoir proves feasible for operational use;
- 3 (b) "Temporary pipeline" means a pipeline that has no potential for operational use;
- 4 (c) "Council certified facility" means an energy facility for which the Council has issued a site
 5 certificate that is either a surface facility related to an underground gas storage
 6 reservoir or a gas pipeline;
- 7 (d) "Connect" means join for the purpose of operational use;
- 8 (e) "Test or maintain" means transporting gas to an underground gas storage reservoir for
 9 the purposes of determining whether the reservoir is feasible for operational use or
 10 maintaining the gas storage capacity of the reservoir but does not include operational
 11 use;
- 12 (f) "Operational use" means transporting gas to an underground gas storage reservoir for
 13 the purpose of storing gas until it is needed for sale or for withdrawing gas from an
 14 underground gas storage reservoir for the purpose of sale;
- 15 (g) "Council substantive standards" means the following standards:
 16 (A) Structural Standard, OAR 345-022-0020;
 17 (B) Soil Protection, OAR 345-022-0022;
 18 (C) Protected Areas, OAR 345-022-0040(1) but excluding (2) and (3);
 19 (D) Retirement and Financial Assurance, OAR 345-022-0050;
 20 (E) Fish and Wildlife Habitat, OAR 345-022-0060;
 21 (F) Threatened and Endangered Species, OAR 345-022-0070
 22 (G) Scenic Resources, OAR 345-022-0080;
 23 (H) Historic, Cultural and Archaeological Resources, OAR 345-022-0090;
 24 (I) Recreation, 345-022-0100;
 25 (J) Public Services, OAR 345-022-0110;
 26 (K) Waste Minimization, OAR 345-022-0120; and
 27 (L) Public Health and Safety, OAR 345-024-0030(2), (3) and (4);
- 28 (h) "Information requirements" means information that would support the findings
 29 described in OAR 345-024-0030(2) and the information described in 345-021-0010(1)(h),
 30 (i), (j), (L), (m), (p), (q), (r), (s), (t), (u), (v), and (w).

32 **345-027-0220**

33 **Request for Approval**

- 34 (1) Before submitting a request for approval to construct, operate and retire a gas storage
 35 testing pipeline, the certificate holder shall:
- 36 (a) Inform the Department of Energy of the proposed pipeline, including its diameter,
 37 length, location, capacity and maximum operating pressure; and
- 38 (b) Provide to the Department a map showing the location of the proposed pipeline.
- 39 (2) After receiving the information described in section (1), the Department shall confer with
 40 the certificate holder about the Council substantive standards and information
 41 requirements that might apply to the proposed pipeline and any extraordinary
 42 circumstances that might affect the time requirements for completing the approval process.
 43 Within 7 days after conferring with the certificate holder, the Department shall send a letter
 44 to the certificate holder that includes the following:

- 1 (a) Identification of the Council substantive standards that are applicable to the request for
2 approval of the proposed pipeline;
- 3 (b) Identification of the information requirements that are applicable to the request for
4 approval of the proposed pipeline;
- 5 (c) The time requirements for the approval process, if different from the time requirements
6 described in OAR 345-027-0230.
- 7 (3) The certificate holder shall submit to the Department a written request for approval to
8 construct, operate and retire a gas storage testing pipeline with the fee required by the fee
9 schedule established under ORS 469.441. The certificate holder shall submit the original and
10 two paper copies of the request to the Department. The certificate holder shall provide
11 additional copies to the Department upon request and copies or access to copies to any
12 person requesting copies. In addition to the printed copies of the request for approval, the
13 certificate holder shall submit the full request in a non-copy-protected electronic format
14 acceptable to the Department.
- 15 (4) In a request for approval, the certificate holder shall include:
- 16 (a) The name and mailing address of the certificate holder and the name, mailing address,
17 email address and phone number of the individual responsible for submitting the
18 request;
- 19 (b) A description of the purpose and operation of the proposed pipeline and a discussion of
20 whether the use of the gas storage testing pipeline for reservoir testing or maintenance
21 will require an increase in the compression available in the Council certified facility to
22 which the proposed pipeline would connect in addition to the compression that is
23 permitted under the site certificate;
- 24 (c) Identification of the Council certified facility to which the proposed pipeline would
25 connect;
- 26 (d) A description of the proposed pipeline, including its diameter, length, location, capacity
27 and maximum operating pressure;
- 28 (e) A map showing the location of the proposed pipeline;
- 29 (f) A list of the names and mailing addresses of all owners of record, as shown on the most
30 recent property tax assessment role, of property where the proposed pipeline is located
31 and within 500 feet of the location of the proposed pipeline;
- 32 (g) The information that the Department has identified in the letter described in section (2);
33 and
- 34 (h) Any other information that the Department requests as needed to make the findings
35 described in the applicable standards.

36

37 345-027-0230**38 Review of a Request for Approval**

- 39 (1) Within 7 days after receiving a request for approval to construct, operate and retire a gas
40 storage testing pipeline, the Department of Energy shall:
- 41 (a) Send copies of the request by mail, email or any other form of electronic delivery to the
42 following agencies with a notice asking the agencies to submit written comments on the
43 request within 14 days from the date of the notice:
- 44 (A) Oregon Department of Fish and Wildlife;

- 1 (B) Oregon Department of Geology and Mineral Industries;
- 2 (C) Oregon Public Utility Commission;
- 3 (D) Oregon Department of Agriculture;
- 4 (E) Division of State Lands; and
- 5 (F) State Historic Preservation Office.

6 (b) Send a notice of the request, including a map showing the location of the proposed
7 pipeline, by mail, email or any other form of electronic delivery to the following stating
8 that the agencies and planning authority may submit written comments on the request
9 within 14 days from the date of the notice:

- 10 (A) Oregon Department of Forestry;
- 11 (B) Oregon Department of Environmental Quality; and
- 12 (C) The planning authority of the county or counties where the proposed pipeline is
13 located.

14 (c) Send a notice of the request, including a map showing the location of the proposed
15 pipeline, by mail or email to the property owners the certificate holder has listed in the
16 request stating that property owners may submit written comments on the request
17 within 14 days from the date of the notice.

18 (d) Post an announcement of the request on the Department's website.

- 19 (2) Within 21 days from the deadline for comments described in section (1) or such longer
20 period as the Department has specified in the letter described in OAR 345-027-0220(2), the
21 Department shall issue a final order stating its findings on the applicable Council substantive
22 standards and its approval or disapproval of the request. In an order approving a request,
23 the Department shall include conditions that the Department finds necessary to ensure
24 compliance with the applicable standards and conditions required by 345-027-0240.
- 25 (3) The Department shall send a notice of the final order to the certificate holder, to the
26 property owners the certificate holder listed in the request and to any person who
27 commented on the request. In the notice, the Department shall state that judicial review of
28 the order is as provided in ORS 469.403.
- 29 (4) The Department may amend an order approving the construction, operation and retirement
30 of a gas storage testing pipeline.
- 31 (5) Notwithstanding ORS 469.503(3), the Department shall not review the proposed pipeline for
32 compliance with other state standards.
- 33 (6) Notwithstanding ORS 469.401(3), the approval of a gas storage testing pipeline by the
34 Department does not bind any state or local agency.

36 **345-027-0240**

37 **Conditions**

38 In an order approving the construction, operation and retirement of a gas storage testing
39 pipeline, the Department of Energy may impose conditions it finds necessary to ensure
40 compliance with the Council substantive standards it identified as applicable in the letter
41 described in OAR 345-027-0220(2). In addition, the Department shall impose the following
42 conditions:

- 1 (1) The certificate holder shall design, construct, operate and retire the gas storage testing
2 pipeline in compliance with applicable Council rules and applicable federal, state and local
3 laws, rules and ordinances in effect at the time the Department issues the order;
- 4 (2) The certificate shall design, construct, operate and retire the gas storage testing pipeline
5 substantially as described in representations in the request for approval and supporting
6 record that the Department finds to be binding commitments made by the certificate
7 holder;
- 8 (3) The certificate holder shall prevent the development of any conditions in the area of the gas
9 storage testing pipeline that would preclude restoration of the area to a useful, non-
10 hazardous condition to the extent that prevention of such conditions is within the control of
11 the certificate holder;
- 12 (4) Upon completion of construction of the pipeline, the certificate holder shall dispose of all
13 refuse and remove all temporary structures not needed to test or maintain an underground
14 gas storage reservoir;
- 15 (5) The certificate holder shall notify the Department of Energy, the State Building Codes
16 Division and the Department of Geology and Mineral Industries promptly if investigations or
17 trenching in the area of the pipeline reveal soil or geological conditions that differ
18 significantly from those described in the request for approval;
- 19 (6) The certificate holder shall submit to the Department copies of all incident reports involving
20 the gas storage testing pipeline required under 49 CFR Sec. 191.15;
- 21 (7) The certificate holder shall allow properly identified representatives of the Council or the
22 Department of Energy to inspect the pipeline at any time, including all materials, activities,
23 premises and records pertaining to design, construction, operation or retirement of the
24 pipeline;
- 25 (8) The certificate holder shall notify the Department when it begins construction, shall keep
26 the Department informed of construction progress and any unusual events or
27 circumstances and shall notify the Department when it begins to use the pipeline for
28 reservoir testing or maintenance;
- 29 (9) The certificate holder shall notify the Department if it terminates use of the gas storage
30 testing pipeline; and
- 31 (10) If the certificate holder decides to convert the gas storage testing pipeline to operational
32 use, the certificate holder shall notify the Department and, if required under OAR 345-027-
33 0050, submit a request to amend the site certificate.

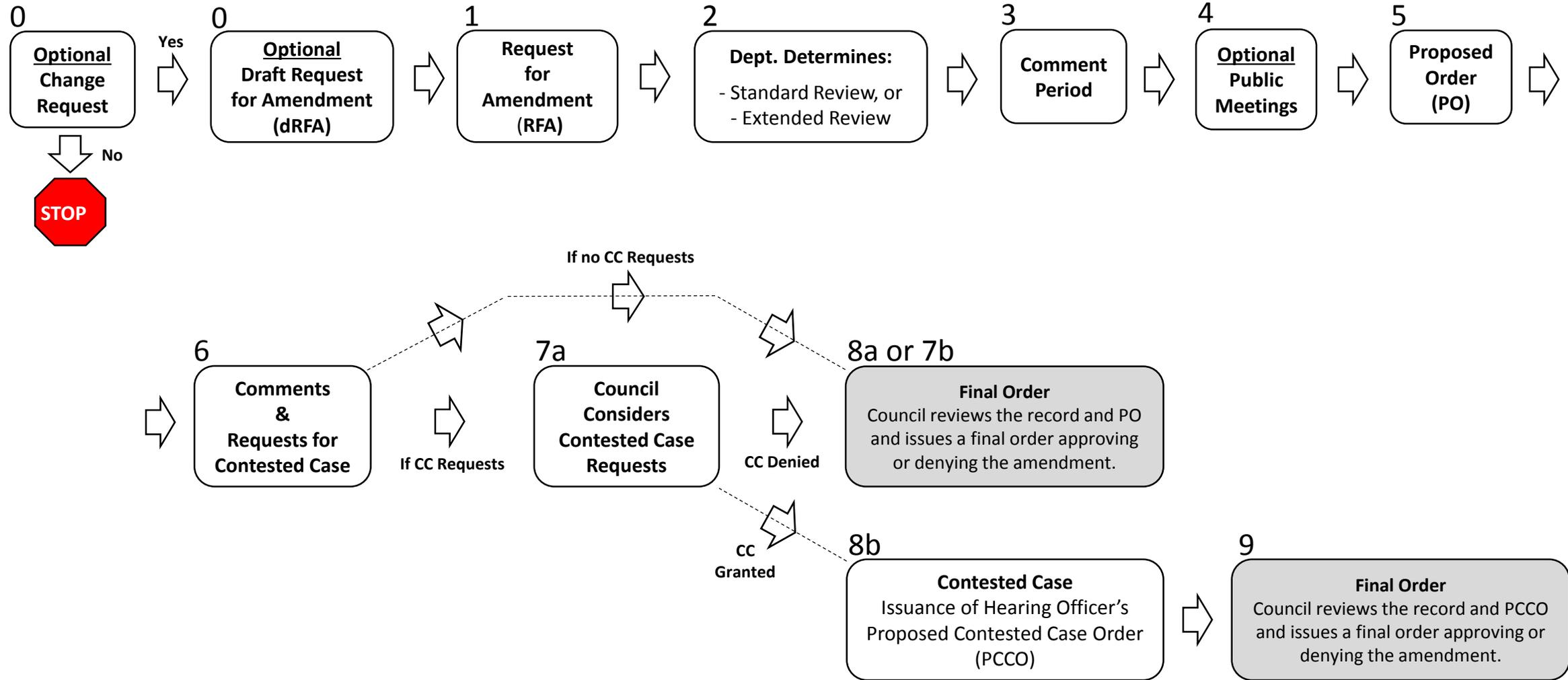
Process Charts for How EFSC Reviews Requests for Amendment (RFA)

2017 Rulemaking proposing changes to the RFA process

Existing Standard Process

Applicable to:

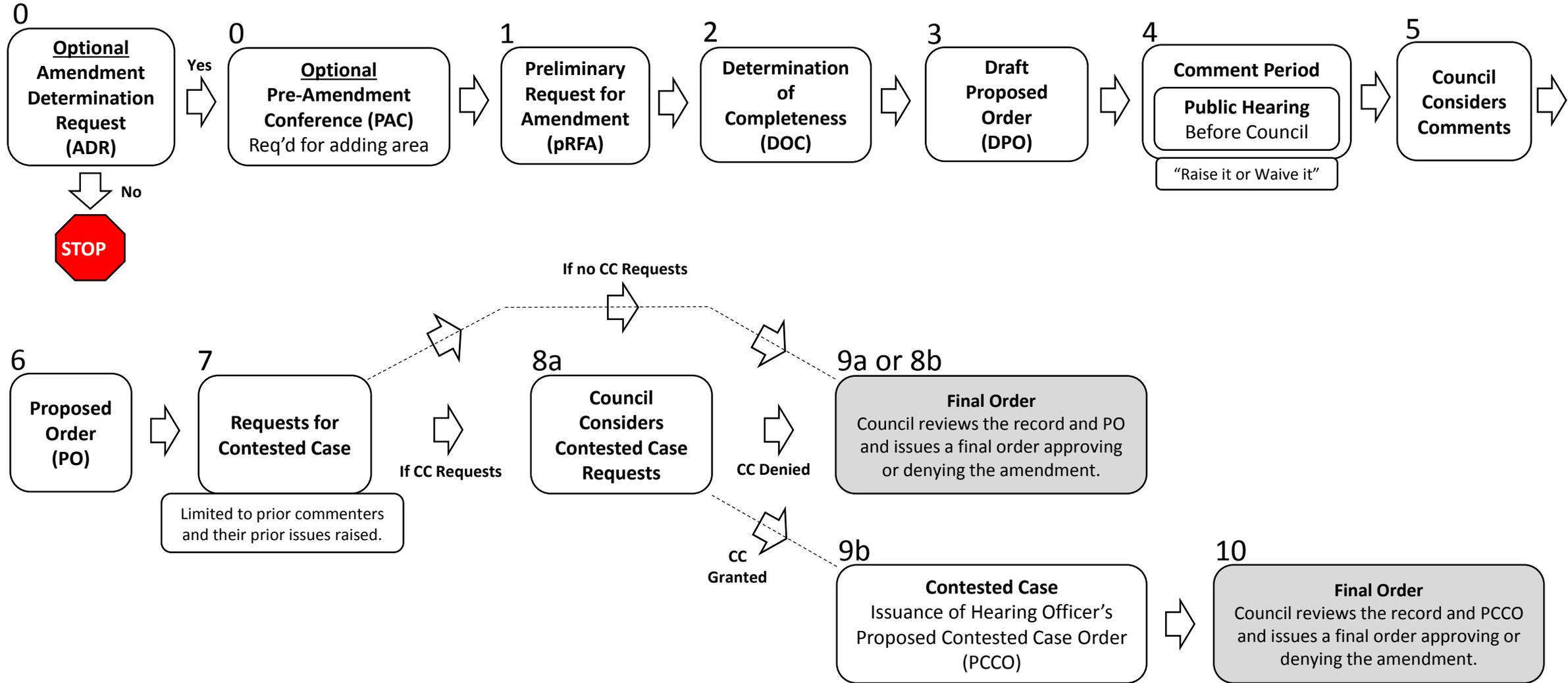
- Later-adopted laws
- Extending construction deadlines
- Design, construct or operate differently than site certificate if...
 - “the 3 could...”



Proposed Rules – New Standard Process

Applicable to:

- Later-adopted laws
- Extending construction deadlines
- Adding area to site boundary
- Design, construct or operate differently than site certificate if...
 - “the 3 could...”



Existing Transfer Process

(No recommended process changes)

Applicable to:

- Transfer of ownership of the facility or the site certificate holder

