

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 OAR 345-027-0050 through 345-027-0100 that were in effect prior to October 24, 2017 apply to
10 requests for amendments to site certificates and change requests that have been received by
11 the Department prior to October 24, 2017.
12

13 **345-027-0013**

14 **Certificate Expiration**

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

21 **345-027-0050**

22 **Changes Requiring an Amendment**

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

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

1 **345-027-0051**

2 **Review Processes for Requests for Amendment**

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

5 (2) The type A review process, consisting of rules 345-027-0059, -0060, -0063, -0065, -0067, -
6 0071 and -0075, is the default review process and shall apply to the Council's review of a
7 request for amendment proposing a change described in 345-027-0050(2), (3), and (4).

8 (3) The type B review process, consisting of rules 345-027-0059, -0060, -0063, -0065, -0068, -
9 0072, and -0075, shall apply to the Council's review of a request for amendment that the
10 Department or the Council approves for type B review under 345-027-0057.

11 (4) The type C review process, described in 345-027-0080, shall apply to the Council's review of
12 a request for amendment that the Department or the Council approves for type C review under
13 345-027-0080.

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

19

20 **345-027-0053**

21 **Changes Exempt from Requiring an Amendment**

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

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

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

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

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

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

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

1 Energy for the construction, operation and retirement of the proposed pipeline. To obtain
2 Department approval, the certificate holder must submit a request as described in OAR 345-
3 027-0210 through OAR 345-027-0240.

4
5 **345-027-0055**

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

7 (1) For a proposed change that would add area to the site boundary, see OAR 345-027-0057(1).
8 For a proposed change to the facility that does not include adding area to the site boundary,
9 the certificate holder may evaluate OAR 345-027-0050 and 345-027-0053 and conclude that the
10 proposed change does not require an amendment. If the certificate holder concludes that a
11 proposed change to the facility does not require an amendment to the site certificate, the
12 certificate holder must complete a written evaluation if the change:

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

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

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

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

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

26
27 **345-027-0057**

28 **Amendment Determination Request**

29 (1) For a proposed change that would add area to the site boundary, the certificate holder must
30 either:

31 (a) submit a request for amendment to the Department of Energy; or

32 (b) submit an amendment determination request to the Department for a written
33 determination of whether the proposed change requires an amendment under OAR 345-027-
34 0050 and is not exempt under 345-027-0053.

35 (2) For a proposed change that would not add area to the site boundary, the certificate holder
36 may submit an amendment determination request to the Department for a written
37 determination of:

38 (a) whether the proposed change requires an amendment under OAR 345-027-0050; or

39 (b) whether the proposed change is exempt from requiring an amendment under 345-027-
40 0053.

41 (3) For any request for amendment, the certificate holder may submit an amendment
42 determination request to the Department for a written determination of whether a request for
43 amendment justifies review under the type B review process described in 345-027-0051(3).

- 1 (4) Requests described in section (1), (2), and (3) must be submitted in writing to the
2 Department and must include:
- 3 (a) A narrative description of the proposed change;
 - 4 (b) Maps and/or geospatial data layers representing the effects and/or location of the proposed
5 change;
 - 6 (c) The certificate holder's evaluation of the determination(s) it is requesting under sections (1),
7 (2), and (3); and
 - 8 (d) Any additional information the certificate holder believes will assist the Department's
9 evaluation.
- 10 (5) After receiving an amendment determination request, the Department shall post an
11 announcement on the Department's website to notify the public that an amendment
12 determination request has been received. The announcement shall include a copy of the
13 amendment determination request.
- 14 (6) Upon receiving a request for a written determination described in section (1) and (2), the
15 Department shall, as promptly as possible, issue a written determination to the certificate
16 holder. After the Department issues its written determination, the Department shall, as
17 promptly as possible, provide the request and the written determination to the Council and
18 post the written determination to its website. At the first Council meeting after the Department
19 issues its written determination, the Department shall provide verbal notice of the request and
20 the written determination to the Council during the consent calendar agenda item. The
21 Department may refer its determination to the Council for concurrence, modification, or
22 rejection. At the request of the certificate holder or a Council member, the Department must
23 refer its determination to the Council for concurrence, modification or rejection.
- 24 (7) Upon receiving a request for a written determination described in section (3), the
25 Department shall, as promptly as possible, issue a written determination to the certificate
26 holder. At the request of the certificate holder, the Department must refer its determination to
27 the Council for concurrence, modification, or rejection.
- 28 (8) In determining whether a request for amendment justifies review under the type B review
29 process described in 345-027-0051(3), the Department and the Council may consider factors
30 including but not limited to:
- 31 (a) The complexity of the proposed change;
 - 32 (b) The anticipated level of public interest in the proposed change;
 - 33 (c) The anticipated level of interest by reviewing agencies;
 - 34 (d) The likelihood of significant adverse impact; and
 - 35 (e) The type and amount of mitigation, if any.

36
37 **345-027-0059**

38 **Pre-Amendment Conference**

- 39 (1) Prior to submitting a preliminary request for amendment to the site certificate as described
40 in OAR 345-027-0060, the certificate holder may request a pre-amendment conference with
41 the Department of Energy to discuss the scope, timing, and applicable laws and Council
42 standards associated with the request for amendment.

1 (2) A pre-amendment conference request must be in writing and must include a description of
2 the proposed change and, if applicable, maps or geospatial data layers representing the
3 location of the proposed change.

4 (3) Upon receipt of a request as described in section (1), the Department must, as promptly as
5 possible, set a date and time for a pre-amendment conference.

6
7 **345-027-0060**

8 **Preliminary Request for Amendment**

9 (1) To request an amendment to the site certificate required by OAR 345-027-0050(3) and (4),
10 the certificate holder shall submit a written preliminary request for amendment to the
11 Department of Energy that includes the following:

12 (a) The name of the facility, the name and mailing address of the certificate holder, and the
13 name, mailing address, email address and phone number of the individual responsible for
14 submitting the request.

15 (b) A detailed description of the proposed change, including:

16 (A) a description of how the proposed change affects the facility,

17 (B) a description of how the proposed change affects those resources or interests protected by
18 applicable laws and Council standards, and

19 (C) the specific location of the proposed change, and any updated maps and/or geospatial data
20 layers relevant to the proposed change.

21 (c) References to any specific Division 21 information that may be required for the Department
22 to make its findings.

23 (d) The specific language of the site certificate, including conditions, that the certificate holder
24 proposes to change, add or delete through the amendment.

25 (e) A list of the Council standards and all other laws - including statutes, rules and ordinances -
26 applicable to the proposed change, and an analysis of whether the facility, with the proposed

27 change, would comply with those applicable laws and Council standards. For the purpose of this
28 rule, a law or Council standard is "applicable" if the Council would apply or consider the law or

29 Council standard under OAR 345-027-0075(2).

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

32 (2) After receiving a preliminary request for amendment, the Department shall post an
33 announcement on its website to notify the public that a preliminary request for amendment
34 has been received. The announcement shall include a copy of the preliminary request for
35 amendment.

36 (3) For any Council standard that requires evaluation of impacts within an analysis area, the
37 analysis area shall be the larger of either the study area(s) as defined in OAR 345-001-0000(59)
38 or the analysis area(s) described in the project order for the application for site certificate,
39 unless otherwise approved in writing by the Department following a pre-amendment
40 conference.

41 (4) The certificate holder may incorporate, by specific reference, evidence previously submitted
42 to the Department in the application for site certificate or previous request for amendment, or
43 evidence that is otherwise included in the Department's record on the facility.

1 **345-027-0063**

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

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

7 (2) Unless the certificate holder agrees to additional time, within 60 days after receipt of a
8 preliminary request for amendment under type A review, and within 21 days after receipt of a
9 preliminary request for amendment under type B review, the Department shall notify the
10 certificate holder whether the request for amendment is complete. In the notification, the
11 Department shall:

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

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

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

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

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

22 (3) If the Department does not notify the certificate holder as described in section (2), the
23 request for amendment under type A review is deemed complete 60 days after receipt of a
24 preliminary request for amendment, and the request for amendment under type B review is
25 deemed complete 21 days after receipt of a preliminary request for amendment. Otherwise,
26 the request for amendment is complete as determined under section (5).

27 (4) The Department may specify a date by which the certificate holder must submit additional
28 information needed to complete the request for amendment. If follow-up requests for
29 additional information are needed, the Department may specify dates by which the certificate
30 holder must submit the information. At the request of the certificate holder, the Department
31 may allow additional time for submission of the information. If the certificate holder does not
32 submit the information by the deadline specified by the Department, including any allowed
33 extension, the Council may reject the preliminary request for amendment. The rejection of a
34 preliminary request for amendment is subject to appeal under ORS 469.403(3).

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

39 (6) After receiving notification from the Department that the preliminary request for
40 amendment is complete, the Department may require the certificate holder to prepare a
41 consolidated request for amendment that includes all revisions to the preliminary request for
42 amendment and all additional information requested by the Department before the
43 determination of completeness. Upon a request by the Department, the certificate holder shall

1 submit paper and non-copy-protected electronic copies of the consolidated request for
2 amendment to the Department as specified by the Department.
3 (7) If, after a determination that a request for amendment is complete, the Department
4 identifies a need for additional information during its review of the request for amendment, the
5 Department may request additional information from the certificate holder.

6
7 **345-027-0065**

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

9 (1) Within 7 days after a request for amendment to the site certificate described in OAR 345-
10 027-0050(3) and(4), or a request for amendment to apply later-adopted laws described in OAR
11 345-027-0090, is determined to be complete, the Department of Energy shall:

12 (a) Send notice to the certificate holder specifying a date for issuance of a draft proposed order.
13 The date of issuance of a draft proposed order for a type A request for amendment shall be no
14 later than 120 days after the date of the notice. The date of issuance of a draft proposed order
15 for a type B request for amendment shall be no later than 60 days after the date of the notice.

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

- 18 (A) A copy of the complete request for amendment;
- 19 (B) The date the draft proposed order will be issued, as specified in the notice required by
20 subsection (1)(a); and
- 21 (C) A statement that the public comment period begins upon issuance of the draft proposed
22 order.

23 (2) No later than the date specified in the notice required by subsection (1)(a), the Department
24 shall issue a draft proposed order recommending approval, modification, or denial of the
25 requested amendment. The Department may issue the draft proposed order at a later date, but
26 the Department shall, no later than the date the Department has specified in the notice
27 required by subsection (1)(a), notify the certificate holder in writing of the reasons for the
28 delay. The draft proposed order may include, but is not limited to draft proposed findings of
29 fact, conclusions of law, and conditions concerning the facility’s compliance with applicable
30 laws and Council Standards.

31

1 **345-027-0067**

2 **Public Comment and Hearing on the Draft Proposed Order for Requests for Amendment**
3 **Under Type A Review**

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

8 (2) Concurrent with the issuance of the draft proposed order as described in OAR 345-027-
9 0065, the Department of Energy shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (f) A statement that:

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

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

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

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

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

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

- 1 (G) The Council will not accept or consider any further public comment on the request for
2 amendment or on the draft proposed order after the close of the record of the public hearing.
3 (4) During the public hearing, the Department shall explain the amendment process, including
4 the means and opportunities for the general public to participate in the process. The
5 Department may provide this explanation by a written handout.
6 (5) At the commencement of the public hearing, the presiding officer shall read aloud the
7 following:
8 (a) A person who intends to request a contested case on the proposed order for a site
9 certificate amendment must comment in person or in writing on the record of the public
10 hearing.
11 (b) A person who intends to raise an issue that may be the basis for granting a contested case
12 proceeding must raise that issue on the record of the public hearing with sufficient specificity to
13 afford the Council, the department and the certificate holder an adequate opportunity to
14 respond to the issue. To raise an issue with sufficient specificity, a person must present facts,
15 on the record of the public hearing, that support the person's position on the issue.
16 (6) At the public hearing, any person may present information regarding the pending request
17 for amendment without administration of an oath. The presiding officer shall record all
18 presentations made during the public hearing. The presentations are part of the decision record
19 for the request for amendment.
20 (7) Following the close of the record of the public hearing on the draft proposed order, the
21 Council shall review the draft proposed order, shall consider all comments received on the
22 record of the hearing, and may provide comments to the Department regarding the draft
23 proposed order. When the Council meets to review a draft proposed order, the Council does
24 not permit the certificate holder, reviewing agencies or the public to comment on any issue
25 that may be the basis for a contested case request.

- 26
27 **345-027-0068**
28 **Public Written Comment on the Draft Proposed Order for Requests for Amendment Under**
29 **Type B Review**
30 (1) After issuance of the draft proposed order as described in OAR 345-027-0065, the Council
31 shall solicit and receive written public comments on the draft proposed order. The Department
32 of Energy shall specify a written comment deadline at least 20 days after the draft proposed
33 order is issued.
34 (2) Concurrent with the issuance of the draft proposed order as described in OAR 345-027-
35 0065, the Department shall:
36 (a) Send the notice described in section (3) of this rule by mail or email to:
37 (A) Persons on the Council's general mailing list as defined in OAR 345-011-0020;
38 (B) Persons on any special mailing list established for the facility;
39 (C) The reviewing agencies as defined in OAR 345-001-0010(52); and
40 (D) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F,
41 (a) Post the complete request for amendment, draft proposed order, and the notice of the draft
42 proposed order and written comment deadline on the Department website, and
43 (b) Make physical copies of the draft proposed order available to the public for inspection.

- 1 (3) Notice of the complete request for amendment, draft proposed order and written comment
- 2 deadline shall include:
- 3 (a) A description of the facility and the facility's general location.
- 4 (b) The name, address, email address and telephone number of the Department representative
- 5 to contact for additional information.
- 6 (c) Addresses of the physical location(s) and the website where the public may review copies of
- 7 the complete request for amendment and draft proposed order.
- 8 (d) The deadline for the public to submit written comments to be included in the record of the
- 9 draft proposed order and how such comments should be submitted.
- 10 (e) A statement that:
- 11 (A) A complete request for amendment has been received and reviewed by the Department.
- 12 (B) The Department has issued a draft proposed order.
- 13 (C) To raise an issue on the record of the draft proposed order, a person must raise the issue in
- 14 a written comment submitted after the date of the notice of the draft proposed order and
- 15 written comment deadline, and received by the Department before the written comment
- 16 deadline.
- 17 (D) The Council will not accept or consider any further public comment on the request for
- 18 amendment or on the draft proposed order after the written comment deadline that closes the
- 19 record on the draft proposed order.
- 20 (E) Only those persons, including the site certificate holder, who provided written comment by
- 21 the written comment deadline may seek judicial review as provided in ORS 469.403 and issues
- 22 eligible for judicial review are limited to the issues raised in that person's written comments.

23
24 **345-027-0071**

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

26 **Amendment Under Type A Review**

- 27 (1) No later than 30 days after the Council has reviewed the draft proposed order and
- 28 considered all comments received on the record of the public hearing under 345-027-0067, the
- 29 Department of Energy shall issue a proposed order recommending approval, modification or
- 30 denial of the request(s) for amendment to the site certificate. The Department must consider
- 31 any oral comments made at the public hearing, written comments received before the close of
- 32 the record of the public hearing, agency consultation, and any Council comments. The
- 33 Department may issue the proposed order at a later date, but the Department shall, no later
- 34 than 30 days after the Council has reviewed the draft proposed order and considered all
- 35 comments received on the record of the public hearing, notify the certificate holder in writing
- 36 of the reasons for the delay.
- 37 (2) Concurrent with issuing the proposed order, the Department shall issue public notice of the
- 38 proposed order by posting public notice as an announcement on its website and by sending
- 39 public notice by mail or email to:
- 40 (a) Persons on the Council's general mailing list as defined in OAR 345-011-0020,
- 41 (b) Persons on any special list established for the facility,
- 42 (c) The reviewing agencies as defined in OAR 345-001-0010(52), and
- 43 (d) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.

- 1 (3) Notice of the proposed order shall include:
2 (a) A description of the facility and the facility's general location.
3 (b) A description of the process for requesting a contested case.
4 (c) The physical and website addresses of where the public may review copies of the proposed
5 order.
6 (d) The name, address, email address and telephone number of the Department representative
7 to contact for more information.
- 8 (4) On the same date the notice of proposed order as described in section (2) is issued, the
9 Department shall send a notice of the opportunity to request a contested case to the certificate
10 holder and to all persons who commented in person or in writing on the record of the public
11 hearing as described in OAR 345-027-0067. The notice shall include the deadline for requesting
12 a contested case and restatements of sections (5), (6), (7), (8) and (9).
- 13 (5) Only those persons, including the site certificate holder, who commented in person or in
14 writing on the record of the public hearing described in OAR 345-027-0067 may request a
15 contested case proceeding on the proposed order for an amendment to the site certificate. To
16 properly raise an issue in a request for a contested case proceeding on the proposed order for
17 an amendment, the issue must be within the jurisdiction of the Council, and the person must
18 have raised the issue in person or in writing on the record of the public hearing, unless the
19 Department of Energy did not follow the requirements of OAR 345-027-0067, or unless the
20 action recommended in the proposed order differs materially from the draft proposed order,
21 including any recommended conditions of approval, in which case the person may raise only
22 new issues within the jurisdiction of the Council that are related to such differences. If a person
23 has not raised an issue at the public hearing with sufficient specificity to afford the decision
24 maker an opportunity to respond to the issue, the Council shall not grant a contested case
25 proceeding for that issue. To have raised an issue with sufficient specificity, the person must
26 have presented facts at the public hearing that support that person's position on the issue.
- 27 (6) Contested case requests must be submitted in writing and must be received by the
28 Department by a specified deadline that is at least 30 days from the date of notice in section
29 (4). Contested case requests must include:
30 (a) The person's name, mailing address and email address and any organization the person
31 represents;
32 (b) A short and plain statement of the issue or issues the person desires to raise in a contested
33 case proceeding;
34 (c) A statement that describes why the Council should find that the requester properly raised
35 each issue, as described in section (7), including a specific reference to the person's prior
36 comments to demonstrate that the person raised the specific issue or issues on the record of
37 the public hearing, if applicable;
38 (d) A statement that describes why the Council should determine that each identified issue
39 justifies a contested case, under the evaluation described in section (9);
40 (e) A detailed description of the person's interest in the proceeding and how that interest may
41 be affected by the outcome of the proceeding;
42 (f) Name and address of the person's attorney, if any;

- 1 (g) A statement of whether the person’s request to participate in a contested case is as a party
2 or a limited party, and if as a limited party, the precise area or areas in which participation is
3 sought;
- 4 (h) If the person seeks to protect a personal interest in the outcome of the proceeding, a
5 detailed statement of the person’s interest, economic or otherwise, and how such interest may
6 be affected by the results of the proceeding;
- 7 (i) If the person seeks to represent a public interest in the results of the proceeding, a detailed
8 statement of such public interest, the manner in which such public interest will be affected by
9 the results of the proceeding, and the person’s qualifications to represent such public interest;
10 and
- 11 (j) A statement of the reasons why others who commented on the record of the public hearing
12 cannot adequately represent the interest identified in subsections (h) or (i).
- 13 (7) Before considering whether an issue justifies a contested case proceeding under section (9),
14 the Council must determine that the person requesting a contested case commented in person
15 or in writing on the record of the public hearing and properly raised each issue included in the
16 request. To determine that a person properly raised each issue included in the request, the
17 Council must find that:
- 18 (a)The person making the contested case request raised the issue on the record of the public
19 hearing described in OAR 345-027-0067 with sufficient specificity to afford the Council, the
20 Department and the certificate holder an adequate opportunity to respond to the issue;
- 21 (b)The Department did not follow the requirements of OAR 345-027-0067; or
- 22 (c)If the action recommended in the proposed order, including any recommended conditions of
23 approval, differs materially from the action recommended in the draft proposed order, the
24 contested case request identified new issues that are related to such material differences.
- 25 (8) If the Council finds that the person requesting a contested case failed to comment in person
26 or in writing on the record of the public hearing or failed to properly raise any issue, as
27 described in section (7), the Council must deny that person’s contested case request. If the
28 Council finds that the person requesting a contested case commented in person or in writing on
29 the record of the public hearing and properly raised one or more issues, the Council’s
30 determination of whether an issue justifies a contested case, as described in section (9), shall
31 be limited to those issues the Council finds were properly raised.
- 32 (9) After identifying the issues properly raised the Council shall determine whether any properly
33 raised issue justifies a contested case proceeding on that issue. To determine that an issue
34 justifies a contested case proceeding, the Council must find that the request raises a significant
35 issue of fact or law that may affect the Council’s determination that the facility, with the change
36 proposed by the amendment, meets the applicable laws and Council standards included in
37 chapter 345 divisions 22, 23 and 24. If the Council does not have jurisdiction over the issue
38 raised in the request, the Council must deny the request.
- 39 (10) The Council must take one of the following actions when determining if a request
40 identifying one or more properly raised issues justifies a contested case proceeding:
- 41 (a) If the Council finds that the request identifies one or more properly raised issues that justify
42 a contested case proceeding, the Council shall conduct a contested case proceeding according
43 to the applicable provisions of OAR 345-015-0012 to -0014 and 345-015-0018 to -0085. The

1 Council shall identify the contested case parties and shall identify the issues each contested
2 case party may participate on. The parties to a contested case proceeding shall be limited to
3 those persons who commented on the record of the public hearing and who properly raised
4 issues in their contested case request that the Council found sufficient to justify a contested
5 case, except that the certificate holder is an automatic party to a contested case. The issues a
6 party to a contested case proceeding may participate on shall be limited to those issues that
7 party properly raised in its contested case request that the Council found sufficient to justify a
8 contested case, except that the certificate holder may participate on any issue the Council
9 found sufficient to justify a contested case proceeding.

10 (b) If the Council finds that the request identifies one or more properly raised issues that an
11 amendment to the proposed order, including modification to conditions, would settle in a
12 manner satisfactory to the Council, the Council may deny the request as to those issues and
13 direct the Department to amend the proposed order and send a notice of the amended
14 proposed order to the persons described in section (4). Only the certificate holder and those
15 persons who commented on the record of the hearing may, in a writing received by the
16 Department within 30 days after the Department issues the notice of the amended proposed
17 order, request a contested case proceeding limited to issues related to the amendment to the
18 proposed order. As described in section (9), the Council shall determine whether any issue
19 identified in the request for a contested case proceeding justifies a contested case proceeding.

20 A person's contested case request under this subsection shall include:

- 21 (A) The person's name, mailing address and email address;
- 22 (B) A statement of the contested issues related to the amendment to the proposed order,
23 including facts believed to be at issue; and
- 24 (C) A statement that describes why the Council should find an issue justifies a contested case,
25 as described in section (8).

26 (c) If the Council finds that the request does not identify a properly raised issue that justifies a
27 contested case proceeding, the Council shall deny the request. In a written order denying the
28 request, the Council shall state the basis for the denial. The Council shall then adopt, modify or
29 reject the proposed order based on the considerations described in OAR-345-027-0075. In a
30 written order the Council shall either grant or deny issuance of an amended site certificate. If
31 the Council grants issuance of an amended site certificate, the Council shall issue an amended
32 site certificate, which is effective upon execution by the Council Chair and by the certificate
33 holder.

34 (11) If there is no request for a contested case proceeding as described in section (6) or
35 subsection (10)(b), the Council, may adopt, modify or reject the proposed order based on the
36 considerations described in OAR 345-027-0075. In a written order, the Council shall either grant
37 or deny issuance of an amended site certificate. If the Council grants issuance of an amended
38 site certificate, the Council shall issue an amended site certificate, which is effective upon
39 execution by the Council Chair and by the certificate holder.

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

42
43

1 **345-027-0072**

2 **Proposed Order and Council's Final Decision on Requests for Amendment Under Type B**
3 **Review**

4 (1) No later than 21 days after the written comment deadline that closes the record on the
5 draft proposed order, the Department of Energy shall issue a proposed order recommending
6 approval, modification or denial of the request(s) for amendment to the site certificate. The
7 Department must consider any written comments received before the close of the record on
8 the draft proposed order and any agency consultation. The Department may issue the
9 proposed order at a later date, but the Department shall, no later than 21 days after the close
10 of the record on the draft proposed order, notify the certificate holder in writing of the reasons
11 for the delay.

12 (2) Concurrent with issuing the proposed order, the Department shall issue public notice of the
13 proposed order by posting public notice as an announcement on its website and by sending
14 public notice by mail or email to:

15 (a) Persons on the Council's general mailing list as defined in OAR 345-011-0020,

16 (b) Persons on any special list established for the facility,

17 (c) The reviewing agencies as defined in OAR 345-001-0010(52), and

18 (d) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.

19 (3) Notice of the proposed order shall include:

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

21 (b) The physical and website addresses of where the public may review copies of the proposed
22 order.

23 (c) The name, address, email address and telephone number of the Department representative
24 to contact for more information.

25 (d) A statement that only those persons, including the site certificate holder, who provided
26 written comment by the written comment deadline may seek judicial review as provided in ORS
27 469.403 and issues eligible for judicial review are limited to the issues raised in that person's
28 written comments.

29 (4) The Council, may adopt, modify or reject the proposed order based on the considerations
30 described in OAR 345-027-0075. In a written order, the Council shall either grant or deny
31 issuance of an amended site certificate. If the Council grants issuance of an amended site
32 certificate, the Council shall issue an amended site certificate, which is effective upon execution
33 by the Council Chair and by the certificate holder.

34 (5) Judicial review of the Council's final order either granting or denying an amended site
35 certificate shall be as provided in ORS 469.403, provided that only those persons, including the
36 site certificate holder, who provided written comment by the written comment deadline may
37 seek judicial review as provided in ORS 469.403 and issues eligible for judicial review are limited
38 to the issues raised in that person's written comments.

39

40 **OAR 345-027-0075 Scope of Council's Review**

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

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

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

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

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

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

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

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

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

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

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

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

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

32

33 **345-027-0080**

34 **Type C Review Process for Pre-Operational Requests for Amendment**

35 (1) A certificate holder may only request the type C review for a request for amendment when
36 the change proposed in the request for amendment relates to the facility, or portion/phase of
37 the facility, not yet in operation, but approved for construction in the site certificate or
38 amended site certificate. A certificate holder cannot request type C review of a request for
39 amendment proposing to extend construction deadlines.

40 (2) Requests under section (1) must be submitted in writing to the Department of Energy and
41 must include:

42 (a) A complete request for amendment, including the information described in 345-027-
43 0060(1);

- 1 (b) The reasons why the certificate holder needs type C review of its request for amendment;
- 2 (c) An explanation of why the proposed change could not have been reasonably foreseen by the
- 3 certificate holder;
- 4 (d) An explanation of why the proposed change is unavoidable; and
- 5 (e) Reasons why the type C review is adequate to prevent significant adverse impacts to the
- 6 resources and interests protected by Council standards.
- 7 (3) Upon receiving a request under sections (1) and (2), the Department shall post the request
- 8 and the request for amendment on the Department's website.
- 9 (4) Within 3 business days after receiving a request under sections (1) and (2), the Department
- 10 shall issue a written determination either granting or denying type C review. Upon issuance, the
- 11 Department shall post the written determination on its website.
- 12 (5) If the Department denies type C review, the certificate holder may request the
- 13 Department's determination to be referred to the Council. If requested, the Department must
- 14 refer its determination to the Council for concurrence, modification or rejection. Upon a
- 15 Department determination being referred to the Council, the Council chair shall convene a
- 16 Council meeting as promptly as possible as described in OAR 345-011-0015.
- 17 (6) To grant a request under section (1), the Department or the Council must find:
- 18 (a) Construction of the certificated energy facility, or portion of the certificated energy facility,
- 19 has not been deemed complete;
- 20 (b) The request for amendment is complete;
- 21 (c) Type C review is necessary;
- 22 (d) The proposed change could not have been reasonably foreseen by the certificate holder;
- 23 (e) The proposed change is unavoidable; and
- 24 (f) Type C review is adequate to prevent significant adverse impacts to the resources and
- 25 interests protected by the Council's standards.
- 26 (7) Within 7 days after a request under section (1) is granted, the Department shall:
- 27 (a) Issue a draft temporary order approving or denying the request for amendment, including a
- 28 recommendation to the Council on whether Council review should be completed through the
- 29 type A or type B review process; and
- 30 (b) Post the draft temporary order on the Department's website.
- 31 (8) The Council shall, at its first meeting following the Department's issuance of a draft
- 32 temporary order, consider the draft temporary order and consider whether review should be
- 33 completed though the type A or type B review process. Upon issuance of a draft temporary
- 34 order, the Council chair may call a special Council meeting, as described in OAR 345-011-0015,
- 35 to be held as promptly as possible.
- 36 (9) After considering the draft temporary order and the Department's recommendation on
- 37 whether review should be completed through the type A or type B review process, the Council
- 38 shall adopt, modify, or reject the draft temporary order based on the considerations described
- 39 in OAR 345-027-0075, and the Council shall decide whether review should be completed
- 40 through the type A or type B review process. In a written temporary order, the Council shall
- 41 either temporarily grant issuance of an amended site certificate, or deny issuance of an
- 42 amended site certificate.

- 1 (10) Before implementing any change approved by the Council's temporary order, the
2 certificate holder must submit an authorized acknowledgement that the certificate holder
3 accepts all terms and conditions of the temporary order.
- 4 (11) If review is to be completed through the type A review process, review proceeds as
5 described in 345-027-0067, -0071, and -0075, where the temporary order replaces all
6 references to the draft proposed order.
- 7 (12) If review is to be completed through the type B review process, review proceeds as
8 described in 345-027-0068, -0072, and -0075, where the temporary order replaces all
9 references to the draft proposed order.
- 10 (13) Action taken by the certificate holder under the authority of the temporary order that is
11 inconsistent with the language and conditions of the final order is not a violation so long as the
12 inconsistency is remedied by the certificate holder as specified by the Council in the final order.

13

14 **345-027-0085**

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

- 16 (1) The certificate holder may request an amendment to the site certificate to extend the
17 deadlines for beginning or completing construction of the facility, or portion/phase of the
18 facility, that the Council has approved in a site certificate or an amended site certificate by
19 submitting a preliminary request for amendment in accordance with 345-027-0060. The
20 preliminary request for amendment must include an explanation of the need for an extension
21 and must be submitted to the Department of Energy before the applicable construction
22 deadline, but no earlier than the date twelve months before the applicable construction
23 deadline.
- 24 (2) A preliminary request for amendment received by the Department within the time allowed
25 under section (1) to extend the deadlines for beginning and completing construction suspends
26 expiration of the site certificate or amended site certificate until the Council acts on the request
27 for amendment. If the Council denies the extension request after the applicable construction
28 deadline, the site certificate is deemed expired as of the applicable construction deadline
29 specified in the site certificate or amended site certificate.
- 30 (3) If the Council grants an amendment under this rule, the Council shall specify new deadlines
31 for beginning or completing construction that are the later of:
- 32 (a) Three years from the deadlines in effect before the Council grants the amendment, or
33 (b) Following a contested case proceeding conducted pursuant to OAR 345-027-0071, two years
34 from the date the Council grants the amendment.
- 35 (4) For requests for amendment to the site certificate received under this rule to extend
36 construction deadlines for facilities or portions of the facility the Council shall not grant more
37 than two amendments to extend the deadline for beginning construction of a facility or a phase
38 of a facility.
- 39 (5) For requests for an amendment to the site certificate to extend construction deadlines for
40 facilities, or portions/phases of facilities, not yet in construction, but already approved for
41 construction in the site certificate or amended site certificate prior to October 24, 2017:
- 42 (a) Sections (1) and (2) of this rule apply;
43 (b) Sections (3) and (4) of this rule do not apply;

1 (c) When considering whether to grant a request for amendment for a deadline extension made
2 under this section, the Council shall consider how many extensions it has previously granted;
3 and

4 (d) If a request for amendment for a deadline extension made under this section is granted, the
5 Council shall specify new deadlines for beginning or completing construction that are not more
6 than two years from the deadlines in effect before the Council grants the amendment.
7

8 **345-027-0090**

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

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

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

18 (a) Identification of the law(s) that the person seeks to apply to the facility; and

19 (b) The particular facts that the person believes clearly show a significant threat to the public
20 health, safety or the environment that requires application of the later adopted law(s).

21 (3) If the Department receives a preliminary request for amendment to apply later-adopted
22 law(s) as described in this rule from any person other than the certificate holder, the
23 Department shall send a copy of the request to the certificate holder. The transmittal shall
24 include a deadline by which the certificate holder must submit a response to the Department.
25 In its response, the certificate holder shall state whether it agrees that there is a clear showing
26 of a significant threat to the public health, safety or the environment that requires application
27 of the later-adopted law(s).

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

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

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

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

- 1 (4) A preliminary request for amendment to apply later-adopted law(s) under this rule is
2 considered a complete request for amendment for purposes of OAR 345-027-0063 on:
3 (a) If the request to apply later-adopted law(s) is made by the certificate holder, the date the
4 request is received by the Department.
5 (b) If the request to apply later-adopted law(s) is made by a person other than the certificate
6 holder, and if the certificate holder responds as described in subsection (3)(a), the date the
7 response described in subsection (3)(a) is received by the Department.
8 (c) If the request to apply later-adopted law(s) is made by a person other than the certificate
9 holder, and if the certificate holder responds as described in subsection (3)(b) or does not
10 respond before the specified deadline under section (3), the date of the Council's
11 determination under paragraph (3)(b)(B).
12 (5) After receiving a complete request for amendment under section (4) of this rule, the Council
13 shall review the request for amendment as described in OAR 345-027-0065, 345-027-0067,
14 345-027-0071 and 345-027-0075, except that:
15 (a) If the Department recommends approval or modified approval of the requested
16 amendment, the Department shall include in the proposed order described in OAR 345-027-
17 0071 any new or modified site certificate conditions necessary to assure compliance with the
18 law(s) applied to the facility under the proposed order;
19 (b) If the Department in its proposed order recommends approval or modified approval of the
20 requested amendment, the certificate holder may, by written request submitted to and
21 received by the Department within 30 days after the Department issues the proposed order,
22 ask the Council to hold a contested case proceeding on the proposed order. In the request, the
23 certificate holder shall provide a description of the issues to be contested and a statement of
24 the facts believed to be at issue. If the certificate holder requests a contested case proceeding,
25 the Council shall conduct a contested case proceeding according to the applicable provisions of
26 OAR 345-015-0012 to -0014, and 345-015-0018 to 345-015-0085 limited to the issues stated by
27 the certificate holder; and
28 (c) The Council shall include new conditions in a site certificate amended under this rule only if
29 the Council finds that the conditions are necessary based upon a clear showing of a significant
30 threat to the public health, safety or the environment.

- 31
32 **345-027-0100**
33 **Request for Amendment to Transfer Ownership, Possession or Control of the Facility or the**
34 **Certificate Holder**
35 (1) For the purpose of this rule:
36 (a) A request for amendment to a site certificate to transfer the site certificate is required for a
37 transaction that results in a change in the ownership, possession or control of the facility or the
38 certificate holder.
39 (b) "New owner" means the person or entity that will gain ownership, possession or control of
40 the facility or the certificate holder.
41 (2) When the certificate holder has knowledge that a transaction that requires a transfer of the
42 site certificate as described in section (1)(a) is or may be pending, the certificate holder shall
43 notify the Department of Energy. In the notice, the certificate holder shall include the name and

- 1 contact information of the new owner, and the date of the transfer of ownership. If possible,
2 the certificate holder shall notify the Department at least 60 days before the date of the
3 transfer of ownership.
- 4 (3) A transaction that would require a transfer of the site certificate as described in subsection
5 (1)(a) does not terminate the transferor's duties and obligations under the site certificate until
6 the Council approves a request for amendment to transfer the site certificate and issues an
7 amended site certificate. The new owner is not allowed to construct or operate the facility until
8 an amended site certificate as described in section (10) or a temporary amended site certificate
9 as described in section (11) becomes effective.
- 10 (4) To request an amendment to transfer the site certificate, the new owner shall submit a
11 written request to the Department that includes the information described in OAR 345-021-
12 0010(1)(a), (d), (f) and (m), a certification that the new owner agrees to abide by all terms and
13 conditions of the site certificate currently in effect and, if known, the expected date of the
14 transaction. If applicable, the new owner shall include in the request the information described
15 in OAR 345-021-0010(1)(y)(O)(iv).
- 16 (5) The Department may require the new owner to submit a written statement from the
17 current certificate holder, or a certified copy of an order or judgment of a court of competent
18 jurisdiction, verifying the new owner's right, subject to the provisions of ORS Chapter 469 and
19 the rules of this chapter, to possession or control of the site or the facility.
- 20 (6) Within 15 days after receiving a request for amendment to transfer the site certificate, the
21 Department shall send a notice of the request by mail or email to the reviewing agencies as
22 defined in OAR 345-001-0010, to all persons on the Council's general mailing list as defined in
23 OAR 345-011-0020, to any special list established for the facility and to the updated property
24 owner list submitted by the new owner under section (4). In the notice, the Department shall
25 describe the request for amendment to transfer the site certificate, specify a date by which
26 comments are due and state that the date of the Council's transfer hearing will be announced
27 on the Department's website.
- 28 (7) Before acting on the request for amendment to transfer the site certificate, the Council shall
29 hold a transfer hearing. The Council shall hold the transfer hearing during a Council meeting
30 and shall provide notice of the hearing on its meeting agenda, which will be sent by mail or
31 email to the Council's general mailing list in advance of the meeting. The transfer hearing is not
32 a contested case hearing. During the hearing the Council will accept comments from the public,
33 reviewing agencies and new owner regarding the new owner's compliance with the Council
34 standards described in subsection (8)(a).
- 35 (8) At the conclusion of the transfer hearing or at a later meeting, the Council may issue an
36 order approving the request for amendment to transfer the site certificate if the Council finds
37 that:
- 38 (a) The new owner complies with the Council standards described in OAR 345-022-0010, 345-
39 022-0050 and, if applicable, OAR 345-024-0710(1); and
- 40 (b) The new owner is or will be lawfully entitled to possession or control of the site or the
41 facility described in the site certificate.

- 1 (9) Except as described in OAR 345-027-0051(5), the Council shall not otherwise change the
2 terms and conditions of the site certificate in an order approving the request for amendment to
3 transfer the site certificate.
- 4 (10) Upon issuing the order described in section (8), the Council shall issue an amended site
5 certificate that names the new owner as the new certificate holder or as the new owner of the
6 certificate holder. The amended site certificate is effective upon execution by the Council chair
7 and the new owner. The Council shall issue the amended site certificate in duplicate
8 counterpart originals and each counterpart, upon signing, will have 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 new owner that includes a showing that the
11 new owner can meet the requirements of section (8), issue a temporary amended site
12 certificate that names the new owner as the new certificate holder or as the new owner of the
13 certificate holder. The temporary amended site certificate is effective upon execution by the
14 Council chair and the new owner. The temporary amended site certificate expires when an
15 amended site certificate as described in section (10) becomes effective or as the Council
16 otherwise orders.
17

1 **345-027-0110**

2 **Termination of a Site Certificate**

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

1 authorizing retirement according to the approved or modified final retirement plan and
2 subject to any conditions the Council finds appropriate. The Council's order may be
3 appealed as described in ORS 183.480.

4 (8) When the Council finds that the certificate holder has completed the retirement of the
5 facility according to the Council's order authorizing retirement, the Council shall issue an
6 order terminating the site certificate.

7 (9) When the Council finds that the site certificate has expired as described in OAR 345-027-
8 0013, the Council shall issue an order terminating the site certificate.

9
10 **Department of Energy Approval of Gas Storage Testing Pipelines**

11 **345-027-0210**

12 **General**

13 (1) A person shall not construct a gas storage testing pipeline unless the certificate holder of the
14 Council certified facility to which the pipeline would connect obtains, before construction,
15 the approval of the Department of Energy for the construction, operation and retirement of
16 the proposed pipeline as required under ORS 469.405(3).

17 (2) For the purposes of OAR 345-027-0210 through 345-027-0240:

18 (a) "Gas storage testing pipeline" means a pipeline, but not a temporary pipeline, that is less
19 than 16 inches in diameter and less than five miles in length, that is used to test or
20 maintain an underground gas storage reservoir and that would connect to a Council
21 certified facility if the storage reservoir proves feasible for operational use;

22 (b) "Temporary pipeline" means a pipeline that has no potential for operational use;

23 (c) "Council certified facility" means an energy facility for which the Council has issued a site
24 certificate that is either a surface facility related to an underground gas storage
25 reservoir or a gas pipeline;

26 (d) "Connect" means join for the purpose of operational use;

27 (e) "Test or maintain" means transporting gas to an underground gas storage reservoir for
28 the purposes of determining whether the reservoir is feasible for operational use or
29 maintaining the gas storage capacity of the reservoir but does not include operational
30 use;

31 (f) "Operational use" means transporting gas to an underground gas storage reservoir for
32 the purpose of storing gas until it is needed for sale or for withdrawing gas from an
33 underground gas storage reservoir for the purpose of sale;

34 (g) "Council substantive standards" means the following standards:

35 (A) Structural Standard, OAR 345-022-0020;

36 (B) Soil Protection, OAR 345-022-0022;

37 (C) Protected Areas, OAR 345-022-0040(1) but excluding (2) and (3);

38 (D) Retirement and Financial Assurance, OAR 345-022-0050;

39 (E) Fish and Wildlife Habitat, OAR 345-022-0060;

40 (F) Threatened and Endangered Species, OAR 345-022-0070

41 (G) Scenic Resources, OAR 345-022-0080;

42 (H) Historic, Cultural and Archaeological Resources, OAR 345-022-0090;

43 (I) Recreation, 345-022-0100;

- 1 (J) Public Services, OAR 345-022-0110;
- 2 (K) Waste Minimization, OAR 345-022-0120; and
- 3 (L) Public Health and Safety, OAR 345-024-0030(2), (3) and (4);
- 4 (h) "Information requirements" means information that would support the findings
- 5 described in OAR 345-024-0030(2) and the information described in 345-021-0010(1)(h),
- 6 (i), (j), (L), (m), (p), (q), (r), (s), (t), (u), (v), and (w).

7
8 **345-027-0220**

9 **Request for Approval**

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

- 1 (c) Identification of the Council certified facility to which the proposed pipeline would
- 2 connect;
- 3 (d) A description of the proposed pipeline, including its diameter, length, location, capacity
- 4 and maximum operating pressure;
- 5 (e) A map showing the location of the proposed pipeline;
- 6 (f) A list of the names and mailing addresses of all owners of record, as shown on the most
- 7 recent property tax assessment role, of property where the proposed pipeline is located
- 8 and within 500 feet of the location of the proposed pipeline;
- 9 (g) The information that the Department has identified in the letter described in section (2);
- 10 and
- 11 (h) Any other information that the Department requests as needed to make the findings
- 12 described in the applicable standards.

13
14 **345-027-0230**

15 **Review of a Request for Approval**

- 16 (1) Within 7 days after receiving a request for approval to construct, operate and retire a gas
- 17 storage testing pipeline, the Department of Energy shall:
 - 18 (a) Send copies of the request by mail, email or any other form of electronic delivery to the
 - 19 following agencies with a notice asking the agencies to submit written comments on the
 - 20 request within 14 days from the date of the notice:
 - 21 (A) Oregon Department of Fish and Wildlife;
 - 22 (B) Oregon Department of Geology and Mineral Industries;
 - 23 (C) Oregon Public Utility Commission;
 - 24 (D) Oregon Department of Agriculture;
 - 25 (E) Division of State Lands; and
 - 26 (F) State Historic Preservation Office.
 - 27 (b) Send a notice of the request, including a map showing the location of the proposed
 - 28 pipeline, by mail, email or any other form of electronic delivery to the following stating
 - 29 that the agencies and planning authority may submit written comments on the request
 - 30 within 14 days from the date of the notice:
 - 31 (A) Oregon Department of Forestry;
 - 32 (B) Oregon Department of Environmental Quality; and
 - 33 (C) The planning authority of the county or counties where the proposed pipeline is
 - 34 located.
 - 35 (c) Send a notice of the request, including a map showing the location of the proposed
 - 36 pipeline, by mail or email to the property owners the certificate holder has listed in the
 - 37 request stating that property owners may submit written comments on the request
 - 38 within 14 days from the date of the notice.
 - 39 (d) Post an announcement of the request on the Department's website.
- 40 (2) Within 21 days from the deadline for comments described in section (1) or such longer
- 41 period as the Department has specified in the letter described in OAR 345-027-0220(2), the
- 42 Department shall issue a final order stating its findings on the applicable Council substantive
- 43 standards and its approval or disapproval of the request. In an order approving a request,

1 the Department shall include conditions that the Department finds necessary to ensure
2 compliance with the applicable standards and conditions required by 345-027-0240.

3 (3) The Department shall send a notice of the final order to the certificate holder, to the
4 property owners the certificate holder listed in the request and to any person who
5 commented on the request. In the notice, the Department shall state that judicial review of
6 the order is as provided in ORS 469.403.

7 (4) The Department may amend an order approving the construction, operation and retirement
8 of a gas storage testing pipeline.

9 (5) Notwithstanding ORS 469.503(3), the Department shall not review the proposed pipeline for
10 compliance with other state standards.

11 (6) Notwithstanding ORS 469.401(3), the approval of a gas storage testing pipeline by the
12 Department does not bind any state or local agency.

13
14 **345-027-0240**

15 **Conditions**

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

21 (1) The certificate holder shall design, construct, operate and retire the gas storage testing
22 pipeline in compliance with applicable Council rules and applicable federal, state and local
23 laws, rules and ordinances in effect at the time the Department issues the order;

24 (2) The certificate shall design, construct, operate and retire the gas storage testing pipeline
25 substantially as described in representations in the request for approval and supporting
26 record that the Department finds to be binding commitments made by the certificate
27 holder;

28 (3) The certificate holder shall prevent the development of any conditions in the area of the gas
29 storage testing pipeline that would preclude restoration of the area to a useful, non-
30 hazardous condition to the extent that prevention of such conditions is within the control of
31 the certificate holder;

32 (4) Upon completion of construction of the pipeline, the certificate holder shall dispose of all
33 refuse and remove all temporary structures not needed to test or maintain an underground
34 gas storage reservoir;

35 (5) The certificate holder shall notify the Department of Energy, the State Building Codes
36 Division and the Department of Geology and Mineral Industries promptly if investigations or
37 trenching in the area of the pipeline reveal soil or geological conditions that differ
38 significantly from those described in the request for approval;

39 (6) The certificate holder shall submit to the Department copies of all incident reports involving
40 the gas storage testing pipeline required under 49 CFR Sec. 191.15;

41 (7) The certificate holder shall allow properly identified representatives of the Council or the
42 Department of Energy to inspect the pipeline at any time, including all materials, activities,

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