

Oregon Department of **ENERGY**

Rulemaking Advisory
Committee

Amendment
Rulemaking

June 26, 2024

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Coordinator, ODOE



Agenda

- 10:00 Welcome and Introductions
- 10:10 Rulemaking Process Overview
- 10:20 Summary of Amendment Rulemaking Scope
- 10:50 Optional Break
- 11:00 Open Discussion by RAC for Raising of Issues
- 11:45 Public Comment Opportunity
- 11:55 Discussion of Next Steps

Rulemaking Process



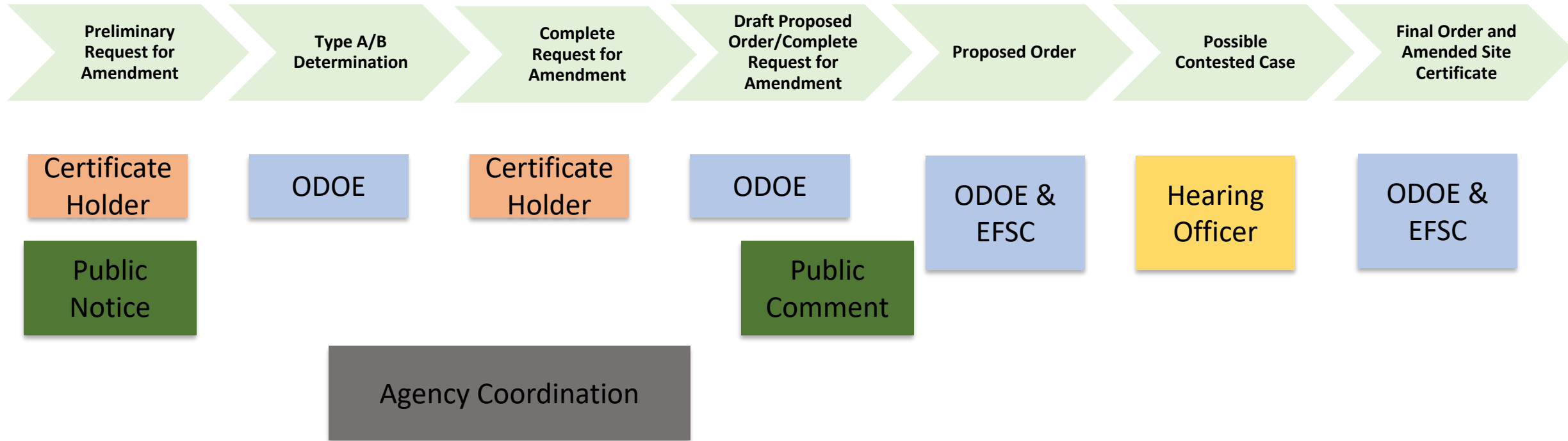
Rulemaking Process



Amendment Rulemaking Schedule



Energy Facility Siting Amendment Process



Why Have An Amendment Process?

- The Council could just require all applications for amendments to a site certificate to follow the exact same process as the initial application.
- After all, the amendments are required to meet the same standards as the original project.

Broad Statutory Framework – ORS 469.405

“A site certificate may be amended with the approval of the Energy Facility Siting Council.”

Why Have An Amendment Process?

- Substantial site review has been done as part of the initial application
 - Efficiencies can be granted the certificate holder while still protecting the public.
- The amendment process allows site certificate holders to make changes to a site certificate in more efficient manner
 - Amendment still requires all changes to the site certificate to adhere to existing state standards and regulations.

What Does It Really Mean

1. No “notice of intent” phase, however existing rules do require public notice when a preliminary request for amendment is filed
2. Reduced notice requirements, including removal of newspaper requirements
3. A higher bar for someone to be a party to a contested case (and no mandatory contested case)
4. A possible “Type B” designation that provides a theoretically more streamlined review process with shorter timeframes throughout

Type A / B Amendments

	Type A	Type B
Amendments Since 2017 (when Type A/B tracks were created)	16	11
Average Duration	10 months	6 months

Scope of Amendment Rulemaking

- **Scope:** Update the Council's amendment rule language, primarily in OAR 345 Division 27
- **Objectives:**
 1. Improve the clarity of the rules by resolving ambiguities.
 2. Improve the amendment process based on lessons learned since the last revision of the amendment rules.
 3. Ensure compliance with new statutes, revised rules, and recent direction of the courts.
- **Outside Scope:** Rules not related to the Council's amendment process

Issues Identified by Staff

- Determine whether TYPE A / TYPE B / TYPE C determination process is worth the effort.
- Takes a lot of time to make this determination. Is the effort expended resulting in an overall efficiency gain?
- Shorter timelines can be reflected in flexibility throughout process

Issues Identified by Staff

- Need rules guiding the return of sites to useful, non-hazardous condition
- Need rules to cover partial retirement of a facility
- Clarify what site changes should trigger the amendment process
 - What if proposed amendment is the size of project that would, by itself, trigger mandatory EFSC review?
 - Also need to update rules to comply with Supreme Court decision regarding boundary changes
- Address issues around timing and substance of pre-amendment conference

Issues Identified by Staff

- Need to modernize application submission requirements (e.g., paper submission requirements)
- Various rules (e.g., 345-027-0313) need to be moved to a more logical place or possibly removed altogether
- Consider rules on how project descriptions / site certificates get updated based on what is built without doing so via amendment
- Clarity on what information applicants must submit in the preliminary request for an amendment as well as for the termination of a site certificate

Issues Identified by Staff

- Need to address issues around incorporation of evidence by the applicant
 - How do we efficiently allow applicants to rely on prior record without burdening the public and staff to figure out what evidence is being relied on from the prior record?
- Consider updating notice requirements throughout the amendment process
 - Is email sufficient for the initial notice?
 - Should all reviewing agencies be required to be notified throughout the process?
- Consider giving the Council greater flexibility regarding in-person meetings

Issues Identified by Staff

- Review contested case trigger and process
 - Review language around full / limited parties
- Consider adding language around the construction completion deadlines
- Consider funding issues around requests by persons for amendment to apply later-adopted laws

RAC Comment

- What rule language do you feel is confusing?
- What steps in the amendment process do you feel should be changed?
- What rules, if any, do you feel do not fit with statute, recent court decisions, or other rules?

Public Comment

Next Steps

- This PowerPoint and a link to the video recording of this presentation will be available shortly on EFSC's rulemaking website.
- RAC members need to circulate any additional concerns or thoughts to the RAC **by July 5.**
- The second RAC meeting will be scheduled for later in July.
- **Be prepared to discuss the nature of concerns raised** – staff will use the outcome of the next meeting to start working on draft language.

Next Steps

Reach out to Tom Jackman at:
tom.jackman@energy.oregon.gov if you have any questions or concerns about the next RAC meeting or how you can contribute!

THANK YOU!