

Agenda Item L - 2020-2022 Rulemaking Schedule

Attachment 2: Rulemaking Project Summaries

R182: General Compliance

Description: Update OAR 345-026-0005 to 345-026-0170 and related rules to better support ongoing compliance activities.

Target Timeframe: 2020

Recommended Process: RAC¹

Rules Affected: OAR 345-026-0005 to 345-026-0170

Background: This project would consist of a review of the rules for construction and operation of energy facilities under OAR 345-026-0005 to 345-026-0170. The objective of the project would be to update rules to better support the Department's ongoing compliance activities. Specific issues that may be part of this project include:

- OAR 345-026-0005 to 345-026-0015 provide the purpose, legislative authority, and scope of the division and provide additional guidance on the construction of the rule language and their intent. The rules should be reviewed for clarity and consistency with statute and other rules.
- OAR 345-026-0048 requires certificate holders to develop and implement a compliance plan, and requires the certificate holder to report the beginning of construction. The specific reporting requirement may be better placed in OAR 345-026-0080, which establishes general reporting obligations for facilities which are under construction or operating.
- OAR 345-026-0050(1)(d) & (e) require the compliance officer to report actual or potential violations of state, federal, or local law to the certificate holder's onsite manager or designee and to the Council. This requirement may exceed Council's authority because it could involve matters outside of Council's jurisdiction.
- OAR 345-026-0080 contains reporting requirements for energy facilities which are under construction or are operating. This rule should be updated to provide more specific requirements and timelines, and to require specific contact information to address compliance information.
- Other relevant issues identified during the staff review process, including grammatic and formatting changes to improve overall clarity and consistency of rules.

¹ A RAC was previously established for this project
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R183: Solar PV Facilities

Description: Evaluate if rulemaking is required to clarify: (1) What is considered to be a “solar photovoltaic power generation facility” as that term is used in the definition of “energy facility” under ORS 469.300(11); and (2) whether there are issues unique to solar PV facilities that require development of specific siting standards.

Target Timeframe: In Progress

Recommended Process: RAC

Rules Affected: New

Background: On June 29, 2018, Council directed Oregon Department of Energy staff to begin the solar PV rulemaking project. After initial RAC meetings in 2018, several stakeholders raised issues with the initial scope of the project. To address these issues, staff presented a revised project scope for the project in its proposal for the 2019 Annual Rulemaking Schedule approved by Council at its February 22, 2019 meeting. The revised scope states the purpose of this project is to evaluate whether rulemaking is needed to clarify:

- (1) What is considered to be a “solar photovoltaic power generation facility” as that term is used in the definition of “energy facility” under ORS 469.300(11); and
- (2) Whether there are issues unique to solar PV facilities that require development of specific siting standards similar to those that govern wind facilities, fossil-fueled facilities, transmission lines, and pipelines.

The RAC met two additional times in 2019, but was temporarily put on hold during the legislative session and was further delayed by staffing considerations and ongoing litigation involving the temporary rules. Staff expects to reconvene the RAC to discuss proposed rule language in late 2019.

In addition to addressing the issues above, staff believes two additional technical changes related to solar facilities may be needed to implement statutory changes enacted by HB 2329 (2019). In addition to increasing the acreage thresholds for Council’s jurisdiction over solar photovoltaic power generation facilities, HB 2329 increased the threshold for wind or geothermal facilities from 35 megawatts to 50 megawatts under ORS 469.300(11)(a)(J). It also expands the types of facilities that may “elect” to obtain a site certificate under ORS 469.320(8) to include small wind or geothermal facilities, “associated transmission lines,” and sub-jurisdictional solar-pv facilities. To comply with these changes, we recommend amending OAR 345-020-0006(3) and 345-021-0000(2) to replace the references to “an electric power generating plant with an average electric generating capacity of less than 35 megawatts from wind energy” and replace it with a reference to “a facility described under ORS 469.320(8).”

R184: Protected Areas, Scenic Resources, & Recreation

Description: Review the Protected Areas, Scenic Resources, and Recreation standards and associated rules to ensure that the areas, designations, and resources protected by rules are up to date and that rules are clear and consistent with the Council’s review process..²

Target Timeframe: 2020

Recommended Process: RAC

Rules Affected: OAR 345-022-0040; 345-022-0080; 345-022-010

Background: The Department has identified a number of issues related to the protected areas, scenic resources, and recreation standards and associated rules, including, but not limited to the following:

- Revising the list of protected areas under OAR 345-022-0040 to refer to specific designations rather than individual areas, and update or remove the date reference to include areas established after May 2007.
- Clarifying the applicability of analysis areas to protected areas
- Considering options to improve notification of managers or owners of protected areas.
- Adding significant or important scenic resources or values identified in state land use or management plans to the resources protected by the standard under OAR 345-022-0080.
- Considering options to evaluate scenic resources.
- Other relevant issues identified during the staff review process.

² This rulemaking project initially contained proposed revisions to requirements for property owner notification lists. This issue was addressed as part of the 2019 Housekeeping Rulemaking Project.

R185: Exemptions from Site Certificate

Description: This project would evaluate potential updates to address several outstanding policy questions regarding Council’s authority to place conditions on a determination that a facility is exempt from the requirement to obtain a site certificate under ORS 469.320, including clarification of Council’s authority to grant an exemption with conditions, and monitoring and reporting requirements for exempt facilities.

Target Timeframe: 2020-2021

Recommended Process: RAC/Notice to interested parties

Rules Affected: OAR 345-015-0350 to 345-015-0380

Background: ORS 469.320(2) through (7) provide specific exemptions from the requirement to obtain a site certificate, and the procedure requirements for Council review of a request for exemption. These procedural requirements are implemented through OAR 345-015-0350 to 345-015-0370. Staff have identified several areas where these rules and statute are not clear, including, but not limited to:

- Does statute authorize the Council to approve a request for exemption with conditions?
- Is the list of for which a person may lose an exemption under OAR 345-015-0380 complete?
- What is the lifespan of an exemption? Should exemptions expire? Should ongoing funding be required to keep exemptions from expiring? Can an exemption be conditioned with construction deadlines that allow for the exemption to expire if deadlines are missed?
- Under what criteria can exemptions be terminated? Would termination require Council action?
- Should the Combined Heat and Power program under ODOE’s Energy Planning and Innovation Division be connected to the Council’s exemption program?

R191: Trojan ISFSI Compliance

Description: Make administrative updates to OAR 345-026-0300 to 345-026-0390 and other rules related to the Trojan Independent Spent Fuel Storage Installation to ensure rules are up to date and address the terms and technical specifications of PGE's renewed Special Nuclear Materials license issued by the Nuclear Regulatory Commission in Aug. 2019.

Target Timeframe: In Progress

Recommended Process: Notice to interested persons

Rules Affected: OAR 345-026-0300 to 345-026-0390

Background: The Trojan Nuclear Power Plant was a 1,130-megawatt nuclear-fueled power plant located in Columbia County. Construction of the Trojan facility began in 1968, after Portland General Electric (PGE) was granted approval for the site by the Governor's Nuclear Development Coordinating Committee. Because the facility was under construction when the Nuclear and Thermal Energy Council (direct predecessor of the Energy Facility Siting Council) was created in 1971, it was deemed to have met all the requirements for a site certificate.³

PGE ceased operations of the plant in late 1992 and began decommissioning the site shortly thereafter. As part of the decommissioning process, all of the spent fuel from the facility was transferred to an Independent Spent Fuel Storage Installation (ISFSI) for storage until the U.S. Department of Energy opens a central repository for the disposal of spent nuclear fuel.⁴ In April of 2005, the Council found that PGE had fulfilled all of the requirements of its approved decommissioning plan and that, with the exception of the ISFSI, the site met all criteria for unrestricted release.

PGE still holds an active site certificate for the Trojan site solely for the ongoing operation of the ISFSI. The site certificate does not contain conditions or findings related to compliance with the Council standards, instead, it requires PGE to comply with rules adopted by the Council. Rules specific to the Trojan facility are found in OAR 345-026-0300 to 345-026-0390. The rules were revised in 2005 to reflect the decommissioning, and now primarily contain regulations and reporting requirements related to the Council's ongoing monitoring of the ISFSI.

In August 2019, the U.S. Nuclear Regulatory Commission (NRC) renewed PGE's Special Nuclear Materials License (License No. SNM-2509), authorizing operation of the Trojan Independent Spent Fuel Storage Installation (ISFSI) until March 31, 2059. ODOE staff are currently evaluating the safety evaluation report, technical specifications, and environmental assessment associated with the renewed license, and will determine if any changes to rules are necessary to maintain compliance with federal laws and regulations and the terms of the renewed license. The department expects to finalize its evaluation and rule recommendations in late 2019.

³ See ORS 469.410(1)(b)

⁴ The ISFSI houses 791 spent nuclear fuel assemblies stored in 34 stainless steel canisters. Each canister is stored upright within a concrete dry cask. The 34 dry casks sit on a 100 x 150 foot concrete pad. The ISFSI also contains supporting facilities needed for the eventual transfer of the canisters to a federal repository.

R193: Noise Standard

Description: Evaluate if Council can and should adopt a noise standard in addition to, or in lieu of, OAR 340-035-0035 to address issues specific to energy facilities.

Target Timeframe: 2020-2021

Recommended Process: RAC

Rules Affected: OAR 345-021-0010(1)(x); new

Background: The Oregon Department of Environmental Quality (DEQ) has adopted noise control regulations from industrial and commercial sources, including energy facilities, under OAR 340-035-0035. In 1991, the Legislative Assembly withdrew all funding for DEQ's noise program and DEQ suspended the processing of requests for exceptions and variances, reviewing plans, issuing certifications, forming advisory committees, and responding to complaints.⁵

Although DEQ no longer administers the program, the noise control regulations continue to apply to EFSC jurisdictional energy facilities via Council rules. Under OAR 345-021-0010(1)(x), an applicant must provide information about noise generated by construction and operation of the proposed facility, providing evidence to support a finding by the Council that the proposed facility complies with the noise control standards promulgated by the Oregon Department of Environmental Quality (DEQ) under OAR 340-035-0035.

This rulemaking project would review how DEQ noise control standards apply to energy facilities and evaluate if Council should consider adoption of a noise standard in addition to, or in lieu of, OAR 340-035-0035.

⁵ See OAR 340-035-0110
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R194: Coordination with Tribal Governments

Description: Evaluate options to encourage communication between applicants and tribal governments to identify historic, cultural, and archaeological resources early in the application process.

Target Timeframe: 2020-2021

Recommended Process: RAC or Public Workshop

Rules Affected: OAR 345-022-0090; OAR 345-021-0010(1)(s)

Background: OAR 345-022-0090 requires the Council to find that the construction and operation of a facility, taking into account mitigation, are not likely to result in significant adverse impacts to certain historic, cultural or archaeological resources. Under OAR 345-021-0010, applicants are required to provide information about significant potential impacts on resources within a proposed facility's analysis area in Exhibit S of the application for a site certificate.

Department staff often recommend that applicants coordinate with tribal cultural resource specialists early in the application process to better identify historic, cultural or archaeological resources under OAR 345-022-0090. At a meeting with staff in 2018, the Confederated Tribes of the Umatilla Indian Reservation requested the Department conduct rulemaking to evaluate options to encourage or require more early communication between applicants and tribal governments to identify historic, cultural, and archaeological resources early in the application process.

If this project is approved, staff recommends seeking input through a Rules Advisory Committee consisting of representatives from Tribal governments, the State Historic Preservation Office, energy developers, and other interested parties, or by holding one or more public workshops on the issue.

R195: Radioactive Waste Materials

Description: This project would evaluate the current regulatory landscape and body of evidence related to the disposal of materials containing naturally occurring radioactive materials, and identify potential updates to the Council’s rules under OAR 345-050.

Target Timeframe: 2020

Recommended Process: RAC

Rules Affected: OAR 345-050-0006 to 345-00-0038

Background: Naturally occurring radioactive isotopes such as radium, uranium, thorium, potassium, and their radioactive decay products, are present in many soils and rock formations in the earth’s crust. These “naturally occurring radioactive materials,” or NORM, may be concentrated in wastes from activities such as mining, oil and gas extraction, and water treatment into “technologically enhanced naturally occurring radioactive materials” or TENORM.

ORS 469.525 limits the types, concentrations, and quantities of radioactive waste materials, including materials containing NORM or TENORM, which may be disposed of or stored in Oregon. The law provides a specific exemption for materials identified in OAR 345-050 which contain mined or refined naturally occurring isotopes in amounts or concentrations that present no significant danger to public health and safety. See ORS 469.300(23)(a).

The council’s rules, which include the exempt quantities and concentrations for radioactive materials, as well as additional interpretive guidance for their application, were last updated 2007. Since then, several other states have revised laws and rules related to the disposal of NORM and TENORM, and new studies on the risks associated with exposure to these materials have been published. This project would evaluate the current regulatory landscape and body of evidence related to the disposal of NORM and TENORM to determine if updates to the Council’s rules are needed.

R196: Amendments 2019

Description: Adopt permanent rules governing the site certificate amendment review process to address procedural and substantive issues identified by the Oregon Supreme Court in its Aug. 1, 2019 decision in *Friends of the Columbia Gorge v. EFSC*.

Target Timeframe: In Progress

Recommended Process: Request for written advice

Rules Affected: OAR 345-015; 345-025; 345-027

Background: This project is intended to replace rules governing the site certificate amendment review process and address procedural and substantive issues identified by the Oregon Supreme Court in its Aug. 1, 2019 decision in *Friends of the Columbia Gorge v. EFSC*. Additional changes to clarify procedures for issuance of contested case notices, requirements for property owner notification, and reduction of printed materials that must be submitted by persons requesting to terminate a site certificate or construct a natural-gas testing pipeline were also included. The rules contain additional grammatical, formatting, and wording changes needed to improve the clarity and consistency of rules in OAR chapter 345.

R201: Geospatial Resources

Description: Consider options to improve Council and Department’s collection and use of geospatial data and resources, including but not limited to, requiring applicants and certificate holders to submit GIS data for energy facilities. In evaluating options, the Department will consider potential costs to applicants and considerations for proprietary information or critical energy infrastructure information.

Target Timeframe: 2020

Recommended Process: RAC

Rules Affected: OAR 345-020-0011, 345-021-0010; 345-025-0006; 345-027-0357; 345-027-0359; 345-027-0360; 345-027-0220

Background: Geospatial data and Geographic Information Systems (GIS) can provide an important analytic for the siting review process. Access to these data can help siting analysts verify the characteristics of a proposed site, and better evaluate the potential impact of a proposed facility on a variety of resources.

Currently, applicants and certificate holders are required to submit maps identifying site boundaries, certain facility components, and resources within analysis areas for a proposed facility during the application or amendment review processes. These maps are often prepared using GIS, while some rules allow submission of maps or geospatial data layers, there is currently no requirement to provide the underlying data or layers. There is also currently no requirement for certificate holders to provide geospatial data or verify the final location of facility components post construction, which can present challenges during ongoing monitoring of a facility.

The project would consider options to improve Council and Department’s collection and use of geospatial data and resources, including, but not limited to, requiring applicants and certificate holders to submit GIS data for energy facilities. In evaluating options, the Department will consider potential costs to applicants and considerations for proprietary information or critical energy infrastructure information. The project would also evaluate options for the Department to better utilize other geospatial data resources in the siting process including tools available from the Oregon Spatial Data Library, state and federal agencies, and other sources.

R202: Research Reactors

Description: Update OAR 345-030 to ensure consistency with federal reporting requirements and deadlines. Clarify the process for notification of incidents or conditions relating to the safe operation of a reactor.

Target Timeframe: 2020

Recommended Process: Notice to interested parties

Rules Affected: OAR 345-030

Background: The Energy Facility Siting Council is responsible for monitoring the operations nuclear installations, including research and test reactors operated for training, research, or isotope production.

Currently, there are two operating research reactors in Oregon. Both of the research reactors are TRIGA (Training, Research, Isotopes, General Atomics) class reactors built by General Atomics. TRIGA reactors are water-cooled and use low-enriched uranium/zirconium-hydride fuel elements. Oregon State University has operated a TRIGA Mark II reactor since March, 1967. Reed College has operated a 250 kW TRIGA Mark I reactor since July, 1968.

Because both reactors were in operation prior to the establishment of the Council, all reporting and monitoring requirements are primarily implemented through rule rather than by conditions in the site certificate. See Oregon laws 1971, chapter 609, section 4. In addition, under ORS 469.420(10), research reactors are exempt from paying annual fees and assessments associated with the site certificate.

The rules for research reactors under OAR 345-030-0005 and 345-030-0010 have not been updated since 2007. The rules contain several references to requirements and specifications in the Technical Specifications and Safety Analysis Reports for the reactors which may be out of date. The rules also contain reporting requirements and deadlines which may be inconsistent with current US Nuclear Regulatory Commission regulations, and this project would consider options to better conform with federal reporting requirements.

R203: Carbon Offset Rate Update

Description: Update the Monetary Carbon Offset Rate under OAR 345-024-0580 to be address historic increases in offset costs. The rate may be increased by up to 50% as allowed by ORS 469.503(2)(c)(C). Note, the rulemaking may not be required if legislation is passed during the 2020 session that eliminates the EFSC Carbon Standard.

Target Timeframe: 2020

Recommended Process: Fiscal Advisory Committee

Rules Affected: OAR 345-024-0580

Background: ORS 469.503(2)(c)(C) provides that an applicant for a site certificate for a facility that emits carbon dioxide may meet the Council’s Carbon Standard by providing funds in an amount deemed sufficient to reduce any greenhouse gas emissions that exceed the amount allowed under the standard.

The monetary offset rate was set at \$0.57 per metric ton in 1997. The Statute authorizes the Council to adjust the rate by up to 50 percent every two years beginning June 26, 2000. Any change to the monetary offset rate must be based on empirical evidence of the cost of offsets and the council’s finding that the standard will be economically achievable with the modified rate for natural gas-fired power plants. As shown in the Table below the rate has been raised three times since 2000. The rate was last updated in October of 2017 to the current rate of \$1.90 per metric ton.

Admin. Order	Effective Date	Rate (\$/t CO _{2e})
EFSC 2-1999	4/14/1999	\$ 0.57
EFSC 1-2001	9/17/2001	\$ 0.85
EFSC 1-2007	5/15/2007	\$ 1.27
EFSC 3-2017	10/23/2017	\$ 1.90

According to the Oregon CO₂ Standard Fourth Five Year Report by the Oregon Climate trust, the current rate of \$1.90 per metric ton of CO_{2e} is below the average global voluntary market rate (\$3.00/mT in 2016) and the average offset price the Climate Trust has been able to negotiate through 2018 (\$5.45 per mT). The Council could amend OAR 345-024-0580 to increase the rate to a maximum of \$2.85/mT, which would still be under the current global and OCT negotiated rates.

The standard could have been updated as early as October 2019, but rulemaking was not recommended because of legislation introduced in the 2019 session (HB 2020), which would have eliminated the carbon standard. Staff notes that if similar legislation passes during the 2020 session, this rulemaking would not be necessary.

R204: 2022 Amendment Rulemaking

Description: Review OAR 345-027 and associated rules to evaluate the efficacy of permanent rules in providing opportunities for public participation and minimizing adverse economic impacts on certificate holders and address outstanding issues from 2019 rulemaking.

Target Timeframe: 2021-2022

Recommended Process: RAC

Rules Affected: OAR 345-027

Background: As part of the 2019 Amendment Rulemaking project, staff recommended that the Council commit to re-opening the amendment rules two years after their adoption to evaluate the efficacy of permanent rules in providing opportunities for public participation and minimizing adverse economic impacts on certificate holders and address outstanding issues from 2019 rulemaking. This rulemaking project is intended to meet those goals, and satisfy the requirement for new rules to be reviewed within five years of adoption to determine whether the rule has had the intended effect under ORS 183.405.

R205: Mandatory Conditions in Site Certificates

Description: Review rules in OAR 345-025 to ensure that the mandatory conditions specified by rule are clear, complete, and necessary to be included in each site certificate. Consider allowing flexibility in language to address site specific conditions and circumstances.

Target Timeframe: 2021-2022

Recommended Process: RAC/Request for Written Advice

Rules Affected: OAR 345-025

Background: OAR 345-025 contains rules providing mandatory, site specific, and monitoring and mitigation conditions which must be included in site certificates. The rules for mandatory conditions, in particular, must be included verbatim in each site certificate, even when they are not applicable or appropriate for the facility. This project would review these rules to ensure that the mandatory conditions specified by rule are clear, complete, and necessary to be included in each site certificate. Conditions which are specific to a certain type of facility may be moved to the appropriate location. In addition, other rules which contain specific reporting or compliance requirements may be amended to move the appropriate sections into these rules. Finally, the project would consider options for allowing flexibility in language to address site specific conditions and circumstances while maintaining the integrity of the compliance program.