



# Oregon

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**To:** Energy Facility Siting Council

**From:** Christopher M. Clark, Siting Policy Analyst & Rules Coordinator

**Date:** January 8, 2021

**Subject:** Agenda Item B (Hearing): Radioactive Materials Enforcement Rulemaking – Rulemaking Hearing for the January 22, 2021 EFSC Meeting

**Attachment:** Attachment 1: Notice of Proposed Rulemaking

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## SUMMARY

The purpose of the Rulemaking Hearing, to be conducted on January 22, 2021, is to take public comment on the Energy Facility Siting Council's (Council) proposed revisions to OAR chapter 345, division 029 regarding the enforcement of rules and laws governing the transport or disposal of radioactive materials and wastes in Oregon. In particular, the Council requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business. The proposed revisions, associated statements of need and fiscal impact are described in the Notice of Proposed Rulemaking provided as **Attachment 1**. In addition to the opportunity to provide oral comments at the January 22, 2021 hearing, the Council will accept written comments on the proposed rules until 5:00 pm on February 10, 2021.

## BACKGROUND

At its December 18, 2020 meeting, the Council initiated formal rulemaking proceedings to adopt the revisions to OAR chapter 345, division 029. Proposed revisions are presented in underline/strikethrough in the Notice of Proposed Rulemaking included as **Attachment 1** to this staff report.

The proposed rules would create a new series of rules that establish separate procedures applicable to the enforcement of rules and laws related to the transport and disposal of radioactive materials and wastes. The new procedures are based, in part, on the Oregon Department of Environmental Quality's procedures for enforcement and civil penalties found in OAR chapter 340, division 012. Among other changes, the new procedures would:

- Specify that formal enforcement proceedings related to the transport and disposal of radioactive materials or wastes, including contested case proceedings, would be conducted under the authority of the Director of the Oregon Department of Energy (Department).
- Establish new procedural requirements for the conduct of enforcement proceedings related to the transport and disposal of radioactive materials or wastes, including issuance of a Pre-Enforcement Notice and Notice of Enforcement Action in place of a Notice of Violation.

- Expand the Department Director’s ability to require a responsible party to provide additional information in response to a Pre-Enforcement Notice.
- Establish new classifications for violations involving the transport or disposal of radioactive materials or wastes.
- Make a civil penalty available for all violations involving the transport or disposal of radioactive materials or wastes and establish a new methodology for civil penalty calculation.

Except for minor editorial changes to improve clarity and consistency of rules, revisions to the existing rules for the enforcement of site certificates and laws and rules governing energy facilities were mostly limited to changes that are necessary to enable the creation of the new procedures for enforcement of laws and rules governing the transport and disposal of radioactive materials or wastes.

## **PROCEDURAL HISTORY**

At its May 21, 2020, meeting, Council initiated a rulemaking project to update administrative rules in OAR chapter 345, division 029 that provide for the rules for enforcement of laws and rules governing the transport and disposal of radioactive materials and waste in Oregon. The objective for this rulemaking is to ensure that the rules are sufficient to protect public health and safety and the environment by incentivizing preventative measures, to ensure that radioactive materials or wastes are not improperly transported or disposed of in Oregon, and to require appropriate mitigation or penalties when a violation occurs.

The Council approved the formation of a Rulemaking Advisory Committee (RAC) made up of interested stakeholders to assist in the development of proposed rule revisions. The RAC met three times over the summer and fall of 2020. At its final meeting, the RAC reviewed and provided input on an initial set of draft proposed rules prepared by the Department.

On December 7, 2020, the Department facilitated a virtual public workshop to provide an opportunity for the public to learn about the rulemaking project, and to provide informal input on the draft proposed rules.

At its December 18, 2020, meeting, Council reviewed a final set of draft proposed rules prepared by staff, and authorized issuance of a Notice of Proposed Rulemaking. The Notice established this rulemaking hearing and established 5:00 pm on February 10, 2021 as the close of the public comment period.

The Notice was provided to members of the legislature specified under ORS 183.335(15) and members of the RAC on December 22, 2020. Consistent with direction provided by Council at its December 18, 2020 meeting, Notice was provided to persons on the Council’s rulemaking mailing lists by email on January 4, 2021 and by regular mail on January 5, 2021.

The table below summarizes the procedural history of this rulemaking project.

<b>Permanent Rulemaking Steps</b>	<b>Date</b>
Council initiation of rulemaking	May 21, 2020
Rulemaking Advisory Committee Meetings	July 15, 2020 August 26, 2020 November 2, 2020
Public Workshop	December 7, 2020
Council Consideration of Proposed Rules	December 18, 2020
Staff issues Notice of Proposed Rulemaking	December 22, 2020 (Legislature) January 4, 2021 (Electronic Mail) January 5, 2021 (Regular Mail)
<b>Rulemaking Hearing</b>	<b>January 22, 2021</b>
Last Day to Submit Written Comments	February 10, 2021 (5:00 PM)
Council Consideration of Public Comments/ Adoption of Permanent Rules	TBD

### **PUBLIC COMMENTS AND CONDUCT OF RULEMAKING HEARING**

The purpose of January 22, 2021 hearing is to take public comment on the Council’s proposed revisions to OAR chapter 345, division 029. In particular, the Council invites public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business. In addition to the opportunity to provide oral comments at this hearing, the Council will accept written comments on the proposed rules until 5:00 pm on February 10, 2021, which is the close of the public comment period. The Council may not review or consider comments submitted after the close of the public comment period unless it decides to extend the comment period for everyone.

The hearing will be conducted by the Council’s Rules Coordinator. The Council will not answer questions during the hearing but may ask commenters clarifying questions. After the close of the public comment period, staff will provide the Council with exact copies of all written comments and a summary of significant issues raised in all oral and written comments and staff’s recommended responses. The Council must consider all comments and determine appropriate responses before adopting permanent rules.

The proposed revisions and associated statements of need and fiscal impact, and instructions for participating in the hearing and submitting written comments are provided in the Notice of Proposed Rulemaking provided as **Attachment 1**. The Notice is also available from the Council’s rulemaking webpage: [www.tinyurl.com/EFSCRulemaking](http://www.tinyurl.com/EFSCRulemaking).