



Oregon

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To: Oregon Energy Facility Siting Council

From: Christopher M. Clark, Rules Coordinator

Date: December 3, 2021

Subject: Agenda Item H (Action Item) – 2022-2024 Rulemaking Update for December 16-17, 2021 Council Meeting

Attachment: Proposed 2022-2024 Rulemaking Schedule

BACKGROUND AND SUMMARY

When a Council member, stakeholder, or staff member raises an issue related to a rule, policy, or procedure under the Council's jurisdiction, staff documents the issue and evaluates whether rulemaking is needed to address it. Unlike issues in a contested case or other formal proceeding, rulemaking issues may be raised at any time, such as during a Council meeting, in public comments, or in written advice to the Council's Rules Coordinator. When several related issues are identified, they may be combined to form a rulemaking project for the Council's consideration.

Each year, the Council reviews previously approved and newly proposed rulemaking projects to identify its rulemaking priorities for the next three years. Staff recommends a schedule of rulemaking projects based on factors including urgency, level of public interest, and complexity. Staff generally recommends that rulemaking projects that may affect public health and safety or the Council's policy priorities be given higher priority in the schedule. Staff is also recommending giving priority to projects that advance the Department's mission and the strategic imperatives identified in its new strategic plan, including projects that:

- Expand and Improve Stakeholder Engagement
- Build Practices and Processes to Achieve More Inclusive and Equitable Outcomes
- Assess and Enhance Organizational Data Capabilities
- Assess and Modernize Agency Programs and Activities
- Optimize Organizational Efficiency and Impact

Staff also considers these imperatives when identifying and evaluating policy alternatives during the rulemaking process and making recommendations for rule changes to the Council.¹

¹ More information about the Department's strategic plan is available at <https://www.oregon.gov/energy/About-Us/Pages/Strategic-Plan.aspx>

The remainder of this staff report provides an overview of the rulemaking process, describes current and recently completed rulemaking activities, and provides staff's recommendations for the prioritization of previously approved and newly proposed rulemaking projects for the next three years. For each previously approved or newly proposed rulemaking project the Council may:

- Authorize staff to conduct preliminary work on the project as part of the rulemaking schedule;
- Reprioritize or postpone development of the rulemaking project; or
- Remove the project from the rulemaking schedule.

For each rulemaking project, staff have also identified a recommended method for engaging with stakeholders in the development of proposed rules. Methods include appointing a Rulemaking Advisory Committee (RAC), holding one or more public workshops, or soliciting written advice from interested members of the public. The Council will be asked to make its final decision on the method for stakeholder engagement at the initiation of a rulemaking project, however, if the Council does not concur with the method identified for a project in this report it may direct staff to pursue an alternate method for that project.

This rulemaking schedule update describes all ongoing, pending, or proposed rulemaking projects which staff expects to work on in the 2022-2024 period. Additional rulemaking projects or rulemaking activities may be proposed before the next update in response to stakeholder petition, statutory changes, or emerging issues of concern. Staff may also propose other corrections or housekeeping changes for Council's consideration during regular Council meetings and may periodically file minor corrections to rules as authorized under ORS 183.335(7) and OAR 345-011-0005(4).

RULEMAKING PROCESS OVERVIEW

A rule is any directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency.² The Council must conduct rulemaking for several reasons, including to meet statutory obligation; to interpret broad statutory authority delegated by the legislature; or to amend, suspend or repeal existing rules.

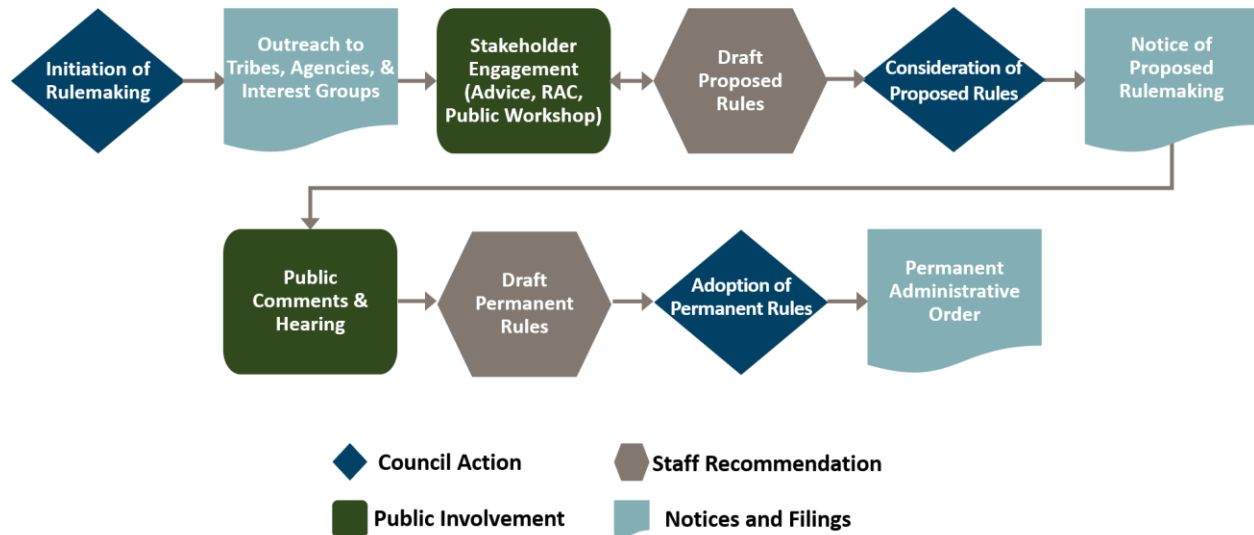
ORS 469.470 requires Council to "adopt standards and rules to perform the functions vested by law in the Council including the adoption of standards and rules for the siting of energy facilities pursuant to ORS 469.501, and implementation of the energy policy of the State of Oregon set forth in ORS 469.010 and 469.310." Several other sections of ORS chapter 469 supplement this broad rulemaking mandate with specific rulemaking requirements. Once the Council has adopted a rule, it is generally bound to follow its terms until it conducts rulemaking to amend or repeal the rule. The Council may wish to change its rules to clarify ambiguous language, streamline or modernize procedures, or align substantive requirements with new policy priorities or strategic imperatives.

The rulemaking process is governed by ORS chapter 183, the Administrative Procedures Act (APA). Among other things, the APA requires each agency that adopts rules to appoint a rules coordinator,

² ORS 183.310(9).

provide notice of permanent rulemaking, and to give interested persons a reasonable opportunity to submit data or views on proposed rulemaking actions.³ Figure 1 provides an overview of the typical permanent rulemaking process used by the Council.

Figure 1. Overview of Permanent Rulemaking Process



Generally, the rulemaking process takes between three and twelve months to complete. The amount of time needed depends on the complexity of issues, the level of public interest and involvement, and the availability of staff resources.

While not required, the APA encourages agencies to involve the public in the development of proposed rules and to seek public input to the maximum extent possible before giving notice of intent to adopt a rule. After the Council initiates a rulemaking project, staff may conduct preliminary outreach to local and tribal governments, agencies with jurisdiction of the rulemaking subject, and other interest groups and stakeholders that are likely to be interested in the proposed rule. After this preliminary outreach, staff will engage with stakeholders to discuss policy issues and obtain advice on what alternatives should be considered in the development of draft proposed rules. Common methods for stakeholder engagement include, appointing a rulemaking advisory committee (RAC), soliciting written advice on rulemaking issues from interested parties, or hosting one or more public workshops.⁴ More than one of these methods may be used during the course of a rulemaking.

Appointing a RAC can be particularly helpful for projects with well-defined issues and high levels of complexity and public interest because it allows for a consistent group of stakeholders to participate throughout the entire process of developing proposed rules, including identifying issues, discussing policy alternatives, and providing input on draft rule language. RAC members are generally asked to provide their individual recommendations and perspectives on potential rule changes, although staff notes when there is general consensus among RAC members on a particular policy alternative or rule change.

³ ORS 183.330(2), ORS 183.335(1), and ORS 183.335(3).

⁴ ORS 183.333.

Use of a RAC may increase the amount of time needed to develop proposed rules, but the RAC's input may improve the quality of the proposed language and may help the agency identify and address concerns and potential issues with proposed rules before the formal public comment period.

If the Council determines that a RAC is appropriate for a rulemaking project, staff will provide a list of potential organizations and individuals that may be interested in participating so that Council may appoint RAC members. The Council has broad discretion over how it will structure a RAC, but the overall membership must represent the interests of persons and communities likely to be affected by the rule.⁵ Staff will also ask Council for input on the number and location of any RAC meetings. For rulemaking projects where the Council has included public workshops in the rulemaking process, staff also will ask Council for its input on the number and location of workshops before any workshop is convened.

In addition to asking for input on draft rules, staff also asks participants in the rulemaking process for recommendations on whether the rules will have a fiscal impact, what the extent of that impact will be, and whether the rules will have a significant adverse impact on small businesses.⁶ This information is used to develop the statements of need and fiscal impact that must be included in any Notice of Proposed Rulemaking issued by the Council. Starting on January 1, 2022, notices must also include a statement identifying how adoption of the rule will affect racial equity in Oregon, and stakeholders may be asked to provide similar input on this requirement.⁷

Staff will consider all advice provided by the Council and stakeholders when preparing the draft Notice of Proposed Rulemaking that includes the draft proposed rules and statutorily required statements. Staff may solicit additional informal advice on draft rule or notice language before making its final recommendations to the Council. In reviewing staff's recommendations, the Council may direct staff to make any revisions to the draft proposed rules or draft notice it sees fit.

Once the proposed rules are approved, staff will file the Notice of Proposed Rulemaking with the Secretary of State. The notice initiates the formal public comment period on the proposed rules and can include notice of a rulemaking hearing. A rulemaking hearing is not always required but will generally be scheduled to be held during a Council meeting near the end of the public comment period. After fully considering comments and oral testimony received during the public comment period, the Council may adopt permanent rules. Council may also suspend a rulemaking project at any time during the process.

RULEMAKING ACTIVITY IN 2021

At its meeting on January 22, 2021, the Council approved its rulemaking priorities for 2021 to 2023. Since that time, the Council has completed one rulemaking project and initiated work on several others.

⁵ The requirement for RAC membership to represent the interests of persons likely to be affected by a rule has been in place since the early 1990's, but during the 2021 session the legislature added the term "communities" to ORS 183.333 (2021 Oregon Laws, chapter 463, section 1.) Staff expects additional guidance on how to implement this new requirement to be available before the law takes effect on January 1, 2022.

⁶ ORS 183.333

⁷ 2021 Oregon Laws, chapter 463, section 2.

Radioactive Materials Enforcement (R195-029)

On February 26, 2021, the Council adopted permanent rules for the enforcement of regulations governing the transport and disposal of radioactive materials and wastes. This rulemaking resulted in the adoption of a new series of rules under OAR chapter 345, division 029, and as such, a five-year review under ORS 183.405 is required to be completed by February 26, 2026.

Trojan ISFSI (R191)

The Trojan Nuclear Power Plant (Trojan) was a 1,130-megawatt nuclear-fueled power plant located in Columbia County, Oregon and operated by Portland General Electric (PGE). PGE ceased operations of the power plant in late 1992 and began decommissioning the site shortly thereafter. As part of the decommissioning process, all of the spent fuel from the power plant was transferred to an on-site Independent Spent Fuel Storage Installation (ISFSI). The site certificate for Trojan remains active for 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 Trojan are found in OAR 345-026-0300 to 345-026-0390.

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 ISFSI until March 31, 2059. ODOE staff are currently evaluating the safety evaluation report, technical specifications, and environmental assessment associated with the renewed license. This rulemaking project is intended to make any changes to the rules that are found to be necessary to maintain consistency with federal laws and regulations, and the monitoring and safety requirements of the renewed license.

The Council initiated formal proceedings to adopt permanent rules for the Trojan facility on October 22, 2021. A rulemaking hearing was held on November 18, and the public comment period on the proposed rules closes on December 10, 2021. The Council is expected to consider the adoption of permanent rules at its December meeting.

HB 2064 (EFSC Quorum) (R218)⁸

HB 2064, which passed during the 2021 legislative session, changes the required quorum for the Energy Facility Siting Council from "five" to "a majority." At its meeting on October 22, 2021, the Council initiated formal proceedings to adopt rules allowing the Council to implement the new quorum requirement when it takes effect on January 1, 2022. Consistent with the provisions of the bill, the proposed rule reduces the number of Council members that constitute a quorum from "five" to "four." A rulemaking hearing on the proposed rule was held on November 18, and the public comment period on the proposed rules closes on December 10, 2021. The Council is expected to consider the adoption of permanent rules at its December meeting.

Protected Areas, Recreation, & Scenic Resources (R184)

At its October 23, 2020 meeting, the Council initiated a review of 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

⁸ This project resulted from legislation passed during the 2021 session and was not included in the 2021-2023 rulemaking schedule.

process. Based on early feedback from stakeholders and recommendations from staff, the Council directed the Department to conduct a series of rulemaking workshops to obtain additional input from stakeholders. The Department conducted three of these workshops between July and October 2021. Staff will present a summary of feedback provided during the workshops and provide the Council with an opportunity to provide additional policy direction before presenting updated analysis and recommendations in early 2022.

Radioactive Waste Materials (R195-050)

As described above, the Council completed rulemaking project related to the enforcement of regulations for the transport and disposal of radioactive materials and wastes in February 2021. During the 2021 session, the legislature passed SB 246 which expanded the Council's authority to regulate radioactive waste and directed the Council to adopt new standards and rules as necessary to prevent it from being disposed of in Oregon.

At its meeting on August 27, 2021, the Council initiated rulemaking to implement the provisions of the bill and to ensure that regulations for the disposal of radioactive waste in OAR chapter 345, division 050 are sufficient to protect public health and safety and the environment. The Council appointed a RAC to assist in the development of proposed rules. The RAC is expected to meet a total of three to six times between the fall of 2021 and spring of 2022, and staff intends to present draft proposed rules for the Council's consideration in mid-2022.

Wildfire Prevention & Response (R215)

The Council authorized staff to begin preliminary work on a rulemaking project to evaluate whether the Council should adopt standards or requirements related to wildfire prevention, preparedness, or response as part of the siting review process as part of its 2021 to 2023 Rulemaking Schedule. The rulemaking is intended to adopt wildfire risk planning and mitigation requirements for energy facilities, similar to those being considered by the Oregon Public Utilities Commission under EO 20-04 and SB 762 (2021). To assist in the development of draft proposed rules, the Council authorized staff to conduct one or more public workshops to obtain additional public input. Staff expects to hold the workshop and present draft proposed rules to the Council for consideration in early 2022.

Application Process Review – Phase 1 (R211)

To issue a site certificate, the Council must find the facility complies with the applicable standards adopted by the Council or that the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet. The Council has adopted 14 General Standards that are applicable to all proposed facilities as well as additional standards applicable to specific types of energy facilities.

The Council's rules describe all the information that must be provided as part of a Notice of Intent, Application for Site Certificate and Request for Site Certificate Amendment in order to demonstrate compliance with the standard. Over time, the Council has separately amended standards and application requirements and, in some cases, the relationship between the application requirements and applicable standard is not clear. This project is intended to create efficiencies and reduce the time and costs associated with siting reviews while having no negative effect on public participation. In particular, these rulemakings would clarify and simplify application requirements to reduce the need for

requests for additional information during the application review process, improve consistency and standardization in the review process, and make the process clearer and more understandable for applicants, reviewing agencies, and interested members of the public.

This project was identified as a rulemaking that could potentially accelerate greenhouse gas emissions reductions in the Department’s implementation plan for Executive Order 20-04 as the project could potentially make the process for siting low carbon energy facilities more timely and efficient. The project is planned to be carried out in three phases:

- Phase 1: Reorganize rules in divisions 015 to 026 to create clear separation of procedural and substantive provisions in rules and simplify procedures for review where practicable.
- Phase 2: Review application information and procedural requirements currently located in division 020 and 021 to ensure that requirements align with what is needed to demonstrate compliance with the Council’s standards.
- Phase 3: Evaluate standards and substantive requirements to determine if requirements should be adjusted for different types of energy facilities, including facilities which generate energy from renewable resources.

The Council initiated work on Phase 1 in August 2021. While this phase will primarily be organizational, it will also seek to clarify and simplify existing procedures for the application review process where practicable, consistent with the intent and objectives described above.

PENDING RULEMAKING PROJECTS FOR 2022-2024

Staff has identified pending rulemaking projects that it believes can be reasonably expected to begin in 2022 and 2023, and additional projects which it recommends be considered in 2024 beyond. This update includes one new project, and the scope and projected timing of some previously approved projects have been revised. Projects are presented in the order that staff expects to begin work based on timing considerations and expected staff availability. While the exact order of projects is subject to change, staff welcomes any additional input from the Council on the timing or sequencing of projects.

Rulemaking Projects Proposed for 2022

In addition to the projects that are currently in progress, staff has identified several high-priority projects which it proposes to initiate in 2022. It is not likely that staff will be able to complete all of these projects in 2022, but the figure below provides a projected work plan that would allow for work to commence on all projects identified as priorities for 2022.

Figure 2. Projected 2022 Rulemaking Work Plan

ID	Short Title	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22
R191	Trojan ISFSI Compliance	PERM												
R218	HB 2064 - EFSC Quorum	PERM												
R215	Wildfire Prevention & Response		DRAFT		NOPR		PERM							
R184	Protected Areas, Recreation, & Scenic Res		DRAFT			NOPR		PERM						
R195	Radioactive Waste Materials			DRAFT			NOPR		PERM					
R211	Application Process Review – Phase 1		SCOPING			DRAFT			NOPR		PERM			
R217	2022 Carbon Offset Rate Update		SCOPING		DRAFT		NOPR		PERM					
R202	Research Reactors		SCOPING		DRAFT		NOPR		PERM					
R185	Exemptions from Site Certificate				SCOPING	DRAFT		NOPR		PERM				
R194	Historic, Cultural, and Archaeological Resources					SCOPING		DRAFT			NOPR		PERM	
R204	2022 Amendment Rulemaking					SCOPING			DRAFT			NOPR		
R212	Application Process Review – Phase 2							SCOPING				DRAFT		
R214	Contested Cases													SCOPING

Implementation of HB 2021 & 2022 Carbon Monetary Offset Rate Update (R217)

The carbon monetary offset rate is used to determine the amount of offset funds required for a facility to satisfy the Council's Carbon Dioxide Emissions Standard under OAR 345-024-0540. The Council may increase or decrease the monetary offset rate by up to 50 percent in any two-year period, if empirical evidence of the costs of offsets shows that a change in the rate is justified and that the new rate will be economically achievable. The Council last increased the rate from \$1.90 to \$2.85 per ton, effective July 1, 2020. At that time the Council determined that the cost of offsets justified an even higher rate and that further increases should be considered when allowed by the statute. The Council directed staff to review the rate again in early 2022 so that an adjusted rate could be in place by July 1, 2022.

Since the last rulemaking update, the legislature enacted HB 2021, which prohibits the Council from issuing a site certificate for a new generating facility that produces electric power from fossil fuels unless the council determines the facility will only produce electricity that is generated and stored in a manner that does not emit greenhouse gas into the atmosphere. The bill also prohibits the Council from approving an amendment of an existing site certificate in a manner that would significantly increase the gross carbon dioxide emissions that are reasonably likely to result from the operation of the energy facility.

Staff recommends the Council expand the scope of this rulemaking project to implement the provisions of the bill. This would include, but is not necessarily limited to, clarifying application requirements for new fossil-fueled power generation facilities and specifying what would constitute a significant increase in the gross carbon dioxide emissions of an existing natural gas facility.

Research Reactors (R202)

Oregon State University and Reed College both operate TRIGA (Training, Research, Isotopes, General Atomic) Class nuclear research reactors. Like other nuclear installations, the research reactors operate under licenses issued by the NRC, and the Council provides state level monitoring and oversight of the facilities as provided by their site certificates and the administrative rules in OAR chapter 345, division 030. This rulemaking project would update division 030 and other rules applicable to research reactors to ensure consistency with federal reporting and notification requirements.

A certificate holder has requested that the Council consider changing the annual reporting deadline for research reactors from August 1 to November 1 to better align with federal reporting requirements. To accommodate this request, staff recommends that this project be prioritized to allow permanent rules to be in place before the next August 1 deadline.

Exemptions (R185)

Certain energy facilities are exempt from the requirement to obtain a site certificate under ORS 469.320. Depending on the type of facility, the person who wishes to claim an exemption may be required to submit an exemption request subject to Council's review and approval. The Council's rules for exemption requests are currently located under OAR 345-015-0350 to 345-015-0380. This rulemaking project would evaluate several outstanding policy questions related to exemptions, including whether the Council may impose conditions on an exemption, ongoing monitoring and reporting requirements for exempt facilities, and the process for loss of an exemption.

Since the last rulemaking update, the legislature enacted HB 2063, which prohibits the Council from requiring a person proposing to construct a standby generation facility to submit an exemption request to the Council. Staff recommends that this project also be used to amend the rules as needed to implement that bill.

Historic, Cultural and Archaeological Resources (R194)

OAR 345-022-0090 requires 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.

Staff often recommends 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. This rulemaking project would evaluate additional options to encourage communication and cooperation between the Department, applicants and tribal governments to identify historic, cultural, and archaeological resources early in the application process.

Staff proposes to hold one or more public workshops on this rulemaking project in areas that are accessible to interested tribal members or government representatives. Consistent with direction provided during the previous rulemaking update, staff proposes to begin outreach on this project in early 2022.

2022 Site Certificate Amendment Rulemaking (R204)

This project would review the rules governing the site certificate amendment review process under OAR chapter 345, division 027. The project would evaluate outstanding issues raised by stakeholders during the rulemaking proceedings on the permanent amendment rules adopted in January 2020 and would evaluate options to improve opportunities for public participation while minimizing adverse economic impacts on certificate holders. Staff notes that many of the issues identified for this project are related to the standard for obtaining a contested case hearing on a request for amendment, and the associated requirements for preserving standing and raising issues. Staff anticipates that some of the stakeholder input provided during this project will also be relevant to the Contested Cases Rulemaking Project scheduled for 2023.

The Council has committed to initiating this rulemaking in 2022, and staff has begun preliminary scoping work. Due to the high level of public interest in the project, staff recommends a RAC be appointed to assist in the development of proposed rules.

Application Process Review – Phase 2 (R212)

Phase 2 of the Application Process Review Project will include review of application information and procedural requirements currently located in division 020 and 021 to ensure that requirements align with what is needed to demonstrate compliance with the Council's standards. If requirements that do not align with an existing standard are identified, staff will evaluate whether the requirements should be removed, or if the standards should be modified. This project is expected to incorporate recommendations produced by the siting program evaluation being conducted as part of the Department's implementation of EO 20-04, although preliminary work to identify issues and possible rule changes may begin before the evaluation is finalized.

Due to the complex nature of this project, and the high level of stakeholder interest anticipated, staff recommends Council appoint a Rulemaking Advisory Committee (RAC) for the project, with the expectation that committee membership may be amended or supplemented for each phase.

Rulemaking Projects Proposed for 2023

Projects proposed for 2023 include projects which are high priority but may be influenced or affected by projects that are currently in progress or proposed for 2022.

General Compliance (R182)

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. Generally, the rulemaking would focus on improving the clarity and consistency of requirements and providing additional specificity for monitoring and reporting requirements and timeframes.

Council previously approved this project to begin in 2018 and appointed a RAC to begin development of proposed rules for the project, however due to staffing issues within the Department, the rulemaking did not move forward at that time. Staff recommends that Council reprioritize this project to begin after the siting program evaluation being conducted as part of the EO 20-04 implementation plan has been completed and any recommendations for the compliance program are finalized.

Contested Cases (R214)

Interest and participation in the contested case process has increased in recent years, and several high-profile contested cases have raised issues regarding the Council's rules for contested cases under OAR chapter 345, division 015. This rulemaking project would evaluate these issues and make rulemaking recommendations to improve clarity in the process and improve consistency with the Attorney General's Model Rules for Contested Cases under OAR chapter 137 and the Quasi-Judicial Land Use Hearing process used by local governments. Specific topics that could be considered include the process for appointing hearing officers, requirements for preserving standing and raising issues, and the availability and use of procedural motions.

Staff has proposed to begin this project in 2023, although we note that some issues related to contested cases may be addressed during Phase 2 of the Application Process Review and the 2022 Site Certificate Amendment Rulemaking Project. Due to the complex nature of the contested case process and the high level of public interest, staff recommends Council appoint a RAC to assist in the development of proposed rules for this project.

Application Process Review – Phase 3 (R213)

Phase 3 of the Application Process Review would evaluate the Council's standards and substantive requirements to determine if requirements should be adjusted for different types of energy facilities, including facilities which generate energy from renewable resources. Specific recommendations would be informed by the siting program evaluation being conducted as part of the EO 20-04 implementation plan and advice provided during Phase 1 and Phase 2 of the project. Staff notes that one output of this project may be proposals for subsequent rulemaking projects focused on specific standards or groups of standards linked by subject matter or interest groups.

Because of the complex nature of this project, and the high level of stakeholder interest anticipated, staff recommends Council appoint a RAC for the project, with the expectation that committee membership may be amended or supplemented for each phase.

Retirement and Financial Assurance (R221)

This project would evaluate issues related to Retirement and Financial Assurance Standard under OAR 345-022-0050 and associated rules. Issues that may be evaluated during this project include whether the current rules are adequate to ensure the development of accurate retirement cost estimates; whether the financial instruments allowed by rule would sufficiently protect the people of Oregon from financial liability if a certificate holder defaulted on its retirement obligations; and whether additional standards or application information requirements are needed to ensure that an applicant has the financial capability to construct and operate a facility before it obtains a site certificate.

This project was not included in previous rulemaking updates, but Staff recommends it be prioritized for 2023 based on the Council's high level of interest in this subject. Staff anticipates that this project would be initiated either during or after Phase 3 of the Application Process Review rulemaking Project.

Radioactive Materials Transport Fees (R222)

In accordance with the Council's rules, any person who wishes to transport certain radioactive materials identified in federal code through Oregon must first obtain an Oregon Radioactive Materials Transport Permit.⁹ The Oregon Department of Energy is the permitting authority but has delegated authority over implementation and operation of the permitting program the Oregon Department of Transportation.

The permit fee amounts are currently set at \$70 for most shipments and \$500 annually for some medical and industrial shipments.¹⁰ These amounts have not been updated since 1986. The fees are primarily used to provide training to first responders and other emergency personnel along the State's transport corridors.

This rulemaking project would evaluate whether the current fee amounts are adequate to fund programs to prevent, prepare for, and respond to potential accidents involving the transport of radioactive material in Oregon. Staff may also evaluate whether or not updates are needed to incorporate changes to federal safety standards that have occurred since the rules were last updated. Staff anticipates the need for at least one RAC meeting to assist in the identification and evaluation of fiscal and economic impacts associated with any potential fee change.

Rulemaking Projects Proposed for 2024 or beyond

The projects proposed for 2024 or beyond are either dependent on other rulemaking projects or external processes with uncertain timing or are still in early stages of development.

Noise Standard (R193)

In the 1970's and 1980's the Environmental Quality Commission (DEQ) adopted standards for noise emissions 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 all activities related to the implementation or enforcement of the rules, but the standards remain in place. The Council's rules, under OAR 345-021-0010(1)(x), require applicants to provide information about noise that may be generated by construction and operation of the proposed facility, to support a finding by Council that the proposed facility complies with the noise control standards under OAR 340-035-

⁹ ORS 469.605(1).

¹⁰ OAR 345-060-0006

0035. This rulemaking project would review how DEQ noise control standards apply to energy facilities and evaluate if Council should consider rule changes to improve clarity and efficiency in verifying compliance for energy facilities.

Staff recommends that this project be conducted in conjunction with the evaluation of other Council standards and substantive requirements during Phase 3 of the Application Process Review. In the meantime, staff will begin preliminary work with DEQ staff to determine the scope of potential changes to the Council's rules given the existing rules in OAR 340-035-0035.

Geospatial Resources (R201)

This rulemaking project would consider options to improve the collection and use of geospatial data and resources in the siting process, including but not limited to, requiring applicants and certificate holders to submit GIS data for energy facilities; and, use of tools, analysis, and recommendations produced by the Oregon Renewable Energy Siting Assessment (ORESA) Project, which the Department is conducting in partnership with the Department of Land Conservation and Development and Oregon State University's Institute for Natural Resources through a grant from the U.S. Department of Defense Office of Economic Adjustment. Due to the technical nature of the subject matter and broad applicability, staff recommends the Council appoint a RAC to assist in the development of proposed rules.

Mandatory Conditions (R205)

This project would 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 and would consider options for allow greater flexibility to address site specific conditions and circumstances.

Due to the technical nature of the subject matter, and the potential for fiscal or economic impacts on certificate holders, staff recommends the Council appoint a RAC to assist in the development of proposed rules for this project.

Natural Hazards Mitigation (R216)

Oregon's Natural Hazards Mitigation Plan (NHMP) provides statewide and regional information on the natural hazards most likely to occur in the state. The NHMP also reports on the potential impacts of natural hazards on people, property, and the environment, and establishes a mitigation strategy to reduce those impacts. Oregon's latest NHMP was approved on September 24, 2020 and is expected to be updated in 2025.

This rulemaking project would evaluate whether and how the siting review process can support the goals of the NHMP and implement natural hazard mitigation strategies either by amending the Land Use or Structural Standards and associated information requirements or adopting a new standard. The scope and timing of this project will likely be influenced by the Wildfire Prevention & Response Project and Phase 3 of the Application Process Review Rulemaking Project. Due to the technical nature of the subject matter, and the potential for fiscal or economic impacts on certificate holders, staff recommends the Council appoint a RAC to assist in the development of proposed rules for this project.

PENDING 5-YEAR REVIEWS

Within five years after adopting a new rule, the Council must conduct a review to determine:

- Whether the rule has had the intended effect;

- Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
- Whether subsequent changes in the law require that the rule be repealed or amended;
- Whether there is continued need for the rule; and
- What impacts the rule has on small businesses.

After the review, the Council must submit its findings to the Secretary of State, the Small Business Rules Advisory Committee, and any RAC appointed by the Council to assist in the development of proposed rules. The following are rules that the Council must review within the next five years.

OAR 345-001-0250 – Solar Photovoltaic Power Generation Facilities

As part of the Solar PV Facilities Rulemaking Project, the Council adopted a new rule explaining the criteria and process for determining when a proposed solar photovoltaic power generation project is an expansion of an existing or proposed solar photovoltaic power generation facility. The 5-year review of this new rule must be completed by June 26, 2025.

OAR 345-015-0003 - Remote and Electronic Public Meeting and Hearings

At its meeting on October 23, 2020, the Council adopted a new rule authorizing the Council or Chair to waive any provision of rule requiring that a public meeting or public hearing be held in person or in a specific geographical area, if the Council or Chair finds that in person attendance at the meeting or hearing would present a risk to public health or safety or the health and safety of the participants. The 5-year review of this rule must be completed by October 23, 2025.

OAR 345-027-0311 to 345-027-0400 – Amendment of Site Certificates

Following the Oregon Supreme Court’s finding that rules governing the process for review of site certificate amendment requests adopted by the Council in 2017 were invalid, the Council conducted rulemaking to repeal the invalidated rules and adopted new permanent rules in their place. While these new rules are substantively similar to the previous rules, a 5-year review is still required to be completed by January 28, 2025. During the proceedings to adopt the new rules, the Council committed to initiating a new rulemaking project to review any outstanding substantive issues related to the new rules within two years after their adoption. The Department proposes to complete the 5-year review of the new amendment rules as part of this project, which is discussed further in the section on the 2022 Site Certificate Amendment Rulemaking Project.

OAR 345-029-0503 to 345-029-0560 – Radioactive Materials Enforcement (R195-029)

On February 26, 2021, the Council adopted permanent rules for the enforcement of regulations governing the transport and disposal of radioactive materials and wastes. This rulemaking resulted in the adoption of a new series of rules under OAR chapter 345, division 029, and as such, a five-year review under ORS 183.405 is required to be completed by February 26, 2026.