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February 8, 1999

To: Interested Parties

Subject: Proposed amendments to Council rules
OAR chapter 345

The Energy Facility Siting Council at the meeting on Friday, February 26, 1999 will take final action on the adoption of amendments to OAR chapter 345, divisions 1, 11, 15, 20, 21, 22, 23, 24, 26, 27, 29, 50 and 60. The Council will hear comments provided in person at this meeting.

On September 1, 1998, the Office of Energy (Office) provided notice to the Council's general and rulemaking lists of an opportunity to review and comment on an early draft of proposed changes to the rules. In addition, this notice set workshops for interested members of the public to participate in, to assist the staff in drafting the proposed rules. The Office held these workshops in lieu of creating a Special Advisory Committee under ORS 183.025(2).

Copies of following are available from the Rules Coordinator and are also available on Office of Energy web site at www.cbs.state.or.us/external/ooe

(1) Proposed Rules
(2) Consolidated Comments Report
(3) Issues Matrix
(4) Heaaring Officer's Report
(5) Staff Recommendations Memo

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Date: February 8, 1999

To: Energy Facility Siting Council

From: John G. White

Subject: Proposed amendments to Council rules

At your meeting on February 26, you will have the opportunity to take final action on the adoption of amendments to Council rules. The Office of Energy proposes the amendments contained in the F Draft of OAR chapter 345, divisions 1, 11, 15, 20, 21, 22, 23, 24, 26, 27, 29, 50 (tables only) and 60.

You have already received the Hearing Officer's Report, including the attachment "Consolidated Comments 12/18/98." In this mailing, we are sending you the F (final) Draft, an Issues Matrix, Appendix A to the Issues Matrix (dealing with the use of the words "potential" and "anticipated"), Findings for the Adoption of New Standards for Fossil-Fueled Power Plants, and an analysis of the transfer rule.

In this memo, I summarize the changes that the staff has made to the proposed amendments in response to the comments of interested members of the public on the E Draft (including the E Draft revisions document). Also, I summarize changes we have made in response to your comments at the December 11 meeting.

The Council Members' Guide to the F Draft

Division 1

345-001-0010(2)
We rephrased the first sentence to avoid the passive voice of "that may be significantly affected by."

345-001-0010(5)
The word "potential" in this rule is the first occurrence of the word in the Council rules. We propose no change of the use of the term in this context.

***Former* 345-001-0010(4)**
The term "biomass energy facility" does not appear anywhere in Council rules under the F Draft proposed amendments, and therefore we propose the deletion. There is no definition of "biomass" in the current rules. The comment suggested retaining the definition because the term "biomass" may be used in a current site certificate. To the extent that the definition of "biomass energy facility" in the current rules provides guidance for the meaning of the term "biomass" in a site certificate issued under the current rules, that guidance will always be available by reference to those rules. There is no need to retain the definition in the amended rules.

345-001-0010(15) and (18)
We revised these definitions to clarify that "energy facility" includes a small generating plant, if the Council finds that the plant needs a site certificate under the new process described in OAR 345-001-0210 (see discussion below).

345-001-0010(33)
The term "net emissions" appears within the definition of "total resource cost." The term "total resource cost" appears not only in OAR 345-023-0020 (need standard) but also in OAR 345-022-0000(2)(b)(B) (balancing rule). In preparing the E Draft, we overlooked the latter usage. In the F Draft we have removed the words "for nongenerating facilities" and "when the applicant must meet the need for facility standard" from the definition of net emissions to correct our error and eliminate confusion.

345-001-0010(53)
Staff believes that the development of a corridor for an underground pipeline has potential scenic and aesthetic impacts, although the pipe itself would be underground. Therefore, we did not change the text of this rule in response to the public comment.

345-001-0060
In response to a question you raised at the December 11 Council meeting, we have revised the title of this rule.

345-001-0200(2)(b)
We eliminated the term "potentially" and rephrased the rule to eliminate passive voice.

345-001-0200, 345-001-0210
In response to public comment, we have revised 345-001-0210. The revision focuses the Council's attention on the *accumulated effects* of small generating plants within an energy generation area. Rather than a making a simple computation of combined generating capacity, the Council would assess the effects of all small generating plants in the area. The Council would require a site certificate when those effects are similar to a single generating plant of 25 megawatts or more.

In the revised definition of "small generating plant," we propose an outright exemption for plants that generate less than 2 megawatts. The proposed rule requires persons proposing to build small

generating plants larger than 2 megawatts (but less than 25 megawatts) to request an exemption. We have proposed revisions to the exemption rules in Division 15 to accommodate this new process. In reviewing the exemption request, the Council would consider the factors listed in 345-001-0210(3). If the Council finds that the accumulated effects of all small generation within the energy generation area are not similar to the effects of a 25-megawatt plant, the proposed plant would not need a site certificate. However, if the effects cross that threshold, or if expansion of an existing small generating plant would increase the generating capacity of the plant to 25 megawatts or more, then a site certificate would be required.

We have revised 345-001-0200 to reflect the definitions in 345-001-0210.

Division 11

345-011-0015(3)
This is a new rule regarding meetings by telephone or other electronic means. We added this rule in response to your comments.

345-011-0080
We rephrased the rule to reduce confusion and to correct a typographical error in the E Draft.

Division 15

345-015-0016(2)
We have not changed the text of this rule. You asked whether there would be any qualification on the "raise it or waive it" rule if a person could not reasonably have known about an issue at the time of the public hearing. The only qualifications allowed in the statute are included in this rule. For example, if the proposed order is materially different from the draft proposed order, then a person may raise a new issue related to that difference.

345-015-0054(1)
We rephrased the last sentence to correct a typographical error.

345-015-0110(2)(c), -0130(2)(d), -0160(2), -0190(9)(d), and –0220(3)(d)
In each of these rules, the term "potential" appears in a similar context. We have made the text of each of these rules consistent. We have eliminated the modifying terms "environmental" and "environmental, social and economic," leaving the more general and inclusive term "impacts." We have addressed the public comment regarding the term "potential" by using the phrase "significant potential." The modifier "significant" is a term defined in Division 1. The definition incorporates the concepts of magnitude and likelihood of the impact. We believe that this change appropriately constrains the scope of "potential impacts" so that no reasonable person would misconstrue it to mean "all possible impacts."

345-015-0190(1)(b)(D) and (4)
These sections describe the additional time needed for the Office of Energy to make a determination of completeness beyond the initial 60-day period. Because of the uncertainty about when the Office will receive the information needed to complete the application, the Office cannot predict a specific date when the application will be complete. We revised these sections to require the Office to estimate the additional time needed rather than specify a date.

Division 20

345-020-0011(1)(b)(A)(ii)
We have rephrased this rule to avoid the passive voice of "anticipated." In addition, we have corrected the numbering of the subparagraphs in this section.

345-020-0011(1)(j), -0011(1)(k)
In each of these rules, the term "potential" appears in a similar context. We have addressed the public comment regarding the term "potential" by using the phrase "significant potential."

345-020-0011(L)
We have rephrased this rule to avoid the passive voice of "anticipated" in two places.

345-020-0040(3)(g)
In this context, we propose no change in the use of the term "potential."

Division 21

We changed the title of this division to "Application for A Site Certificate."

345-021-0000(1)
We revised the reference to exemptions to reflect the inclusion of exemption for certain small generating plants within energy generation areas created under the proposed OAR 345-001-0200.

345-021-0000(4)
We have revised this rule in response to public comment. The revision takes into account the differences between two types of permit applications. For non-federally delegated permit applications, the Council must make the permitting decision. However, the Council relies heavily on the advice of the agency that issues the permit. We believe it is appropriate and necessary for the agency to advise us when the permit application provides an adequate basis for a permit decision. We should not find the site certificate application complete until we have all information necessary for decisions that the Council must make.

For permit decisions federally delegated to another agency, although the Council does not make the permit decision, the responsible agency is bound by statute to conduct its review

"simultaneously with the council's review of the site certificate application." ORS 469.505. The proposed new language in this rule addresses the need for coordination between the Council and other agencies having federally-delegated responsibility. Often, the Council needs information from the responsible agency to make findings on Council standards or to impose appropriate conditions.

345-021-0010
For the reasons the hearing officer has discussed, we do not recommend rewriting this rule in an effort to turn its requirements into "guidelines." We believe strongly that the effort we have put into making this rule more specific, compared to the current rule, will improve the process of application review. By making the content of an application more complete, based on the information this rule specifies, an applicant may reduce the amount of additional information it must gather, prepare and submit during the completeness phase of the review. In contrast, imprecise "guidelines" would likely produce *less* complete applications and result in an extended period of information-gathering during the completeness phase of the review.

345-021-0010(1)
We rephrased the first sentence to avoid the jargon phrase "issued pursuant to."

345-021-0010(1)(a)(B)
In response to the public comment, we have added "if known" in reference to "persons upon whom the applicant will rely in meeting any facility standard adopted by the Council." The intent of this paragraph of the rule is to get a full roster of the key players in the development of the facility, to the extent the applicant knows who the key players are at the time of the application review. We believe the reference to Council standards makes the universe of key players reasonably clear and manageable.

345-021-0010(1)(b)(A)(v)
We have rephrased this rule to avoid the passive voice of "anticipated." Also, we have corrected the numbering of the subparagraphs in this section.

345-021-0010(1)(e)(D)
We did not change the text of this rule in response to the public comment. We believe the information about the timing of issuance of federally delegated permits is relevant to the statutory requirement of coordination between the Council and the responsible agency, discussed above. We changed "permits" to "permit applications" to match the language in 345-021-0000(4)(b).

345-021-0010(1)(g)
We did not change the text of this rule in response to the public comment. We believe the materials analysis as described in the rule is helpful to the Council and gives the Council a more complete understanding of the impact of construction and operation of the facility.

345-021-0010(1)(h)(E), -0010(1)(I)(C), -0010(1)(j), -0010(1)(L)
In response to public comment, we have replaced the term "potential" with the term "significant potential." The context is similar in each of these rules.

345-021-0010(1)(k)(C)(iv) and (v)
In response to public comment, we removed the phrase "in the opinion of the Council secretary" from each of these subparagraphs. This will allow the applicant to assess the likelihood that the Council will find compliance with applicable substantive criteria and statewide planning goals. However, the Office of Energy may make its own assessment during the completeness phase of application review and may request additional analysis from the applicant.

345-021-0010(1)(k)(D)
We did not change the text of this rule in response to the public comment. We believe that information about federal land use analysis may be helpful to the Council in supporting its findings under the land use standard. The Council may need information about federal land management plans to make findings under the scenic and aesthetic values standard. The Council's governing statute, ORS 469.310, recognizes the need to cooperate with federal agencies, and information about federal regulation of the site is essential in that regard. The Attorney General's office has advised us that the Council may require an applicant to provide this information.

345-021-0010(1)(n)
In response to public comment, we changed the reference to the "economically reasonable" rule to a reference to the "system reliability" rule.

345-021-0010(1)(o)
In response to public comment, we revised this rule to allow the applicant to copy information from a permit application or to give cross-references to relevant information in a permit application. The information is relevant to the general standard of review, which requires the Council to find compliance with Oregon statutes and administrative rules. Water rights are subject to permits issued under state statutes and administrative law. We also rephrased this rule to avoid the passive voice of "anticipated."

345-021-0010(1)(o)(G)
We did not change this rule in response to the public comment about what would constitute "evidence." The proposed language is quite specific about what factors are relevant to the Council's findings regarding issuance of a groundwater or surface water permit or approval of a transfer of water use under the statutes cited. To the extent that the application to the Water Resources Department includes discussion of those factors, the permit application would be "evidence." However, an applicant may have other evidence relevant to the Council's finding and should include that information in Exhibit O.

345-021-0010(1)(p)
In response to public comment, we replaced the term "potential" with the term "significant potential."

345-021-0010(1)(q)
We did not change the requirement to identify federally-listed threatened or endangered species in response to public comment. We believe the Council needs to know if there could be any adverse impact on a federally-listed species so that the Council can include appropriate conditions in the site certificate to avoid or mitigate that impact. ORS 469.310 requires the Council to cooperate with the federal government, and the ability to cooperate implies that the Council must know about all federal regulation affecting the site.

In response to public comment, we rephrased this rule to avoid the passive voice of "anticipated" and the possibly confusing use of the term "potential." In addition, we have removed the references to endangered species management plans and survival guidelines, because the Oregon Fish and Wildlife Commission has not yet adopted such plans or guidelines.

We have replaced the references to "applicable conservation program or plan" in paragraphs (D) and (E) with references to "protection and conservation programs" to be consistent with the statutory terminology. We have made other language changes in this rule to avoid passive voice.

345-021-0010(1)(r)
In response to public comment, we replaced the terms "anticipated" and "potential" with the term "significant potential." We did not change the term "scenic and aesthetic values" nor restore the current rule reference to "acknowledged" local land use plans in response to public comment. The language we propose in the F Draft is consistent with the current language of the "Scenic and Aesthetic *Values*" standard, OAR 345-022-0080.

345-021-0010(1)(s)(D)
We replaced the passive term "anticipated" with the term "significant potential."

345-021-0010(1)(t)
We rephrased the introductory paragraph of this rule to make it consistent with the language of the recreation standard, OAR 345-022-0100. In response to public comment, we eliminated E Draft paragraph (A), which contained the confusing phrase "formal and informal recreation facilities." In the renumbered paragraph (B), we replaced the term "potentially significant" with the term "significant potential."

345-021-0010(1)(u)
We replaced the term "potential" with the term "significant potential."

345-021-0010(1)(y)
In response to public comment, we added the phrase "that emits carbon dioxide" after the words "nongenerating energy facility."

345-021-0010(1)(z)
We rephrased paragraph (A) to correct typographical errors and to eliminate the term "potential." In paragraphs (B) and (C), we replaced the term "potential" with the term "significant potential." In paragraph (D), we eliminated the term "potential."

345-021-0010(1)(aa)(A)(vi)
We eliminated the term "anticipated."

345-021-0010(1)(bb)
We changed "department" to "Office."

345-021-0050(4)(a)
We rephrased this rule to avoid the passive voice of "anticipated."

Division 22

345-022-0000(2)(b)(C)
At your meeting on December 11, you suggested clarification of the phrase "net environmental impacts." We have revised the rule. We propose the new phrase "*overall* environmental *effects*," because effects are usually not quantifiable. The term "net" suggests that the Council's finding is a simple matter of subtracting the bad ones from the good ones; "overall" captures the sense of balancing non-quantifiable values. We propose changing "impacts" to "effects" because the former term tends to connote negative effects only. The Council must determine a balance. The overall environmental effects may be negative. The intent is that the Council will balance negative effects with any positive environmental effects from the facility in considering this factor. As further clarification, the proposed new language specifically excludes the resource protected by the standard the facility does not meet (which is already considered under "damage to the resource") and effects included in the consideration of "total resource cost" (already considered in (2)(b)(B)).

345-022-0010(2)
At your December meeting, you questioned whether the rule should allow a rebuttable presumption that the applicant has met the organizational, managerial and technical expertise standard based on ISO 9000 or ISO 14000 certification. The ISO certification means that an independent auditor has approved the applicant's programs for quality (ISO 9000) or for compliance with environmental regulations (ISO 14000). The independent auditor reviews the program for compliance with an internationally recognized standard. ISO certification may not be perfect, but is becoming a recognized industry standard, and will improve. We believe that this provision is appropriate. It encourages the industry to take responsibility for itself with less emphasis on government oversight. If, during the agency and public review processes, we develop information that rebuts the presumption, we can bring that evidence before the Council in the draft proposed order.

345-022-0020
In sections (2) and (4), we eliminated the term "potential." We retained the term "potential" in section (3) because we believe there is no confusion when the term is used in that context.

345-022-0040(1)
In response to public comment, we added the phrase "except as provided in sections (2) and (3)" to the beginning of the first sentence. We rephrased the sentence to avoid the passive voice. We did not change the term "potentials" in subsection (k).

345-022-0070
In response to public comment, we have removed the references to endangered species management plans and survival guidelines. We have replaced the references to "applicable conservation program" in sections (1)(a) and (b) with references to "protection and conservation programs" to be consistent with the statutory terminology. We have rephrased the rule to avoid using the term "potential."

345-022-0100
We replaced the term "impact area" with the term "analysis area" because the proposed rules do not use the term "impact area."

Division 23

345-023-0005
We propose no change to the language "Council may adopt need standards for other nongenerating facilities" (other than to add "The" to the beginning of this sentence). Although this is new language, there is direct statutory support for it. HB3283 retained the authority of the Council to adopt standards addressing the need for non-generating facilities. ORS 469.501(1)(L). This rule lists the kinds of facilities that are subject to the need standard. By implication, any type of facility that the rule does not list is exempt from the requirement. The proposed amendments to Division 23 alter the structure of the current need rules. Under the current rules, all facilities are subject to a need standard, except those declared exempt by rule. Under the current rules, the exemptions are listed in OAR 345-23-010. Under the proposed amendments, 345-023-0005 does not apply a need standard to *all* facilities but only to those types of facility listed in the rule. Therefore, there is no need for a separate rule to list exemptions. Accordingly, the proposed rules delete OAR 345-23-010.

There is no implication here that surface facilities related to underground gas storage are being treated, as the public comment has said, "in a class by themselves." The proposed amendments retain the current exemption of those facilities from the need standard. Likewise, other types of facilities not listed in 345-023-0005 are exempt. The Council retains the discretion it has always had under the current rules to adopt, through rulemaking, new need standards in the future.

345-023-0005(1)
In response to public comment, we replaced the term "economically reasonable" with "system reliability." We believe that the Council should retain its need standard for transmission lines and not speculate about potential or anticipated federal regulatory changes.

345-023-0020(1)
In response to public comment, we replaced "shall grant a conclusive presumption of need" with "shall find that the applicant has demonstrated need for the facility." Also, we changed the title of this rule for simplicity and consistent style.

345-023-0020(1)(b)
We retained the term "potential" because we believe there is no confusion when the term is used in this context.

345-023-0030
In response to public comment, we changed the title of this rule and added the phrase "as it applies either internally or externally to a utility system" to section (2). Also, we changed "may" to "shall" in the introductory language before section (1).

345-023-0040
In response to public comment, we changed "may" to "shall" in the introductory language before section (1). Also, we changed the title of this rule for simplicity and consistent style.

Division 24

345-024-0015(3)
We eliminated the term "potential" from sections (3) and (3)(a).

345-024-0060
In response to public comment, we deleted this rule. We used the substance of E Draft sections (1)(a) and (b) to draft new mandatory conditions in OAR 345-027-0020(13)(a) and (b).

345-024-0090
We renumbered the sections of this rule. We deleted E Draft sections (1)(c) and (d) and used the substance of those sections to draft new mandatory conditions in OAR 345-027-0020(14)(a) and (b).

345-024-0620
We did not change this rule from what we proposed in the E-draft. Public comment was divided on whether the Council should adopt a CO_2 standard for nongenerating energy facilities different from the standard we proposed in the E-draft.

The law allows the Council to set a standard for nongenerating facilities at the level it determines appropriate. We recommend the Council use as its principle in setting the standard that the standard be equivalent in performance and environmental impact to the CO_2 standard for other facilities. Therefore, we recommend the Council adopt a CO_2 emissions rate 0.522 lb. CO_2 per horsepower-hour for nongenerating facilities. This is equivalent to the 0.7 lb. CO_2/kWh the law requires for base-load gas plants. It is also equivalent to the standard we recommend for non-base load generating plants.

The criteria in ORS 469.503(2)(b) reflect the multiple principles the drafters used in crafting the original standard at 0.7 lb. CO_2/kWh for base-load power plants. Our recommended standard for *non-base load plants* balances all the listed principles, as the law requires. Although the law does not require the Council to consider those principles for setting the standard for nongenerators, our recommended standard for nongenerating plants meets all the principles that are not specific to generating plants. Therefore, the equivalent standards for base-load power plants, for non-base load power plants, and for nongenerating facilities meet the same tests and have the same justifications. In particular, we demonstrated in our testimony on December 2, 1998, that the recommended standard is attainable and economically achievable.

Northwest Natural (NWN) recommends the Council set the standard based the same percentage reduction from currently available technology as the percentage reduction required for base-load gas plants. That yields a standard of 0.701 lb. CO_2/hp-hr, which NWN states is 17 percent below the most efficient compressor now available. In effect, NWN proposes a single principle for setting the standard for nongenerating facilities. NWN isolates a single element of the base-load standard — the fact that the standard is 17 percent below current technology for those types of facilities — and recommends that as a sole principle for setting the standard for compressors. However, that single principle does not reflect how the standard for base-load plants was arrived at in drafting the law.

NWN argues that a compressor is different technologically from a combined-cycle power plant and that it cannot achieve the same level of technological efficiency. However, meeting the proposed standard has a similar economic impact to meeting the standard for non-base load power plants, which is about one percent of the net present value of capital and operating costs. The impact on rate payers of the proposed CO_2 standard applied to a 5,500 horsepower compressor for natural gas storage would be about $0.02 to $0.03 annually.

Renewable Northwest Project (RNP) supports our recommendation. Using a set percentage reduction for setting the standard, as NWN proposes, allows some facilities to emit CO_2 at a higher rate than others do. Further, using a technology-based principle could result in the Council needing to set a different standard for each variation in technology.

We believe that for the Council to set the standard for compressors solely on a percentage reduction from current technology, without considering the environmental impact and whether a higher standard is attainable and economically achievable, would in effect allow compressors to meet an easier threshold than other facilities have to meet. It would also set a precedent that, when the Council considers standards for other facilities, the Council gives a priority to the

current state of technology over other considerations that are spelled out in the law, such as costs and environmental impact.

Division 26

345-026-0050(1)(e)
We retained the term "potential" because we believe there is no confusion when the term is used in this context.

345-026-0080 and 345-026-0125
In response to public comment, we have revised OAR 345-026-0080 to avoid possible duplication of reporting requirements. We have made other minor changes for consistency and clarity. We have added sections (2)(b)(C) and (2)(h) that address information needed for implementing the carbon dioxide standards. We have included semiannual construction reports within this rule and have eliminated OAR 345-026-0125.

345-026-0370, -0390
We did not change the terms "potential" and "anticipated" in these rules because we have generally proposed little change to the rules for nuclear installations due to their limited applicability.

Division 27

345-027-0020(2), 345-027-0023(6)
We added exception language to 345-027-0020(2) accommodate the change in section (5), discussed below, that would allow construction of a linear to begin before the certificate holder has acquired legal rights to construct for all parts of the site. We made corresponding revisions in 345-027-0023(6) to require the certificate holder to supply the legal description before beginning operation of the facility.

345-027-0020(5)
In response to public comment, we have revised this rule. For generating facilities, we have retained the substance of the current rule, which requires control over the "lands on which clearing or construction will occur" (literally, all parts of the site) before beginning construction. In the F Draft, we propose a new exception for linear facilities. The proposed new language would allow construction to begin on part of a linear site before the certificate holder has "construction rights" over the entire site. However, the rule would allow construction to begin only on parts of the site that would be unaffected by any change in the route of the linear that happens during the course of the certificate holder's negotiations to acquire construction rights on other parts of the site. The intent is to avoid unnecessary disturbance to areas that the certificate holder will not need for the facility in its final route.

345-027-0020(12)
We eliminated the term "potential."

***Former* 345-027-0023(8)**
In response to public comment, we deleted E Draft section (8) of this rule.

345-027-0030, -0060, -0070
In response to public comment, we have revised these rules to allow the Council to grant more than one extension of the deadlines for beginning or completing construction. In 345-027-0030(1), we added a reference to "an amended site certificate" at the end of the first sentence. We have restored some of the current rule language in section (3) to clarify that the Council will review a request for an extension under the regular amendment review process. In section (4), we propose that the Council limit each extension to two years. Under this rule, the Council may grant multiple extensions of the deadlines, but any single extension would not exceed two years.

In 345-027-0060(1)(f), we replaced the term "evaluation" with the term "analysis," and we added a definition of "applicable." We added a new subsection (1)(g) that requires an updated list of property owners as part of a request for an extension of the deadlines for beginning or completing construction.

We simplified the title of 345-027-0070. We divided section (1) into two subsections, and, in subsection (b), we added a requirement for the Office of Energy to send the notice to the list of property owners supplied by the certificate holder in a request for extension of deadlines. We revised section (6) by simplifying the introductory paragraph and rearranging the subsections. In subsection (6)(b), we propose factors for the Council to consider when reviewing a request for an extension of construction beginning or completion deadlines. In response to public comment, paragraph (C) gives the Council flexibility to choose *not* to apply a new standard to the facility in certain circumstances. However, the Council may find that applying a new standard is necessary to avoid a significant threat to public health, safety or the environment.

345-027-0070(2)
We revised this rule to allow the Office of Energy more time to complete a proposed order when special circumstances exist. Our recent experience in preparing the proposed order for the South Mist Feeder Pipeline amendment is an example of special circumstances.

345-027-0080
We simplified the title of this rule.

345-027-0100
In response to public comment, we have re-written this rule. We have consulted with the Attorney General's office in drafting the proposed language. The separate analysis that we have sent with this mailing provides an extended discussion of the public comments and our rationale for the proposed language.

The proposed rule eliminates the confusion arising from the current rule's separation of "involuntary" and "voluntary" transfers. It allows the Council chair to issue a temporary amended site certificate in emergency circumstances when the certificate holder did not foresee the transfer or was unable to give sufficient advance notice of a pending transfer. The proposed language requires the transferee to be "an applicant" and to be bound by a site certificate before it can construct or operate a facility. These requirements are statutory.

Division 29

We have made no changes to Division 29.

Division 50

Table 1
In response to public comment, we have added concentration limits for certain additional isotopes.

Division 60

345-060-0045(1)
The language proposed for this rule is the same as we proposed in the "Proposed Revisions to the E Draft" which we issued at the time of the public hearing in December. The public comment may have been based on the earlier E Draft version, and we believe the revision addresses the concern raised by the comment. The change from the current rule eliminates the passive voice but otherwise does not change the substance of the rule. The requirement that the "carrier or shipper" maintain insurance is conditional. The proposed language imposes this requirement "if required by the Price-Anderson Act."