



Oregon

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To: Oregon Energy Facility Siting Council

From: Thomas L. Jackman, Rules Coordinator

Date: December 5, 2025

Subject: Agenda Item B (Action Item) – 2026-2028 Rulemaking Update for the December 19, 2025 Council Meeting

Attachment: Attachment 1 – Proposed 2026-2028 Rulemaking Schedule

2026 RECOMMENDATIONS

For 2026, staff recommends the following rulemaking schedule:

- Completion of the following rulemakings:
 - Timely Communication with Tribal Governments
 - Radioactive Material Transport Fees
 - Modernization
 - Exemptions
 - General Compliance
 - Organizational Expertise and Retirement and Financial Assurance Standards
- Initiation of the following rulemakings:
 - Application Process Review – Phase 3 (Council choice – see Page 7)
 - Application Process Review – Phase 3 (Council choice – see Page 7)
 - Mandatory Conditions in Site Certificates

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 a rulemaking is needed to address it. Unlike issues in a contested case or other formal proceedings, 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 prioritizes previously approved and newly proposed rulemaking projects based on factors including urgency, level of public interest, and complexity.

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 soliciting written advice, holding one or more public workshops, or convening a Rulemaking Advisory Committee (RAC). While staff will seek final approval of the method for stakeholder engagement at the initiation of a rulemaking project, 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 draft rulemaking schedule describes all ongoing and potential rulemaking projects which staff could work on in the 2026-2028 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 described under ORS 183.335(7) as authorized by OAR 345-011-0005(4).

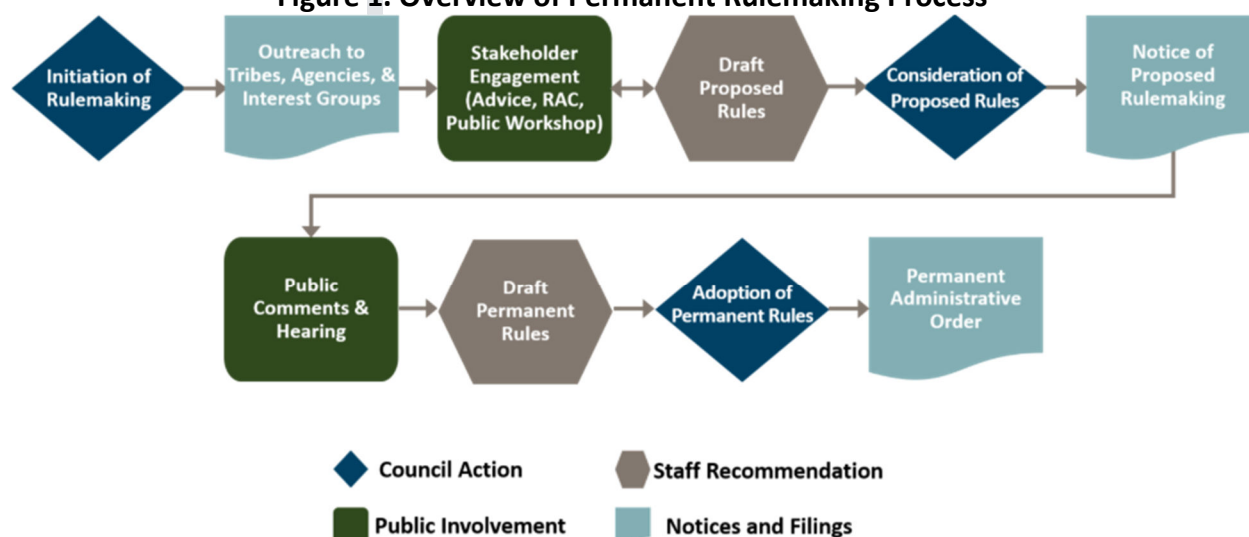
RULEMAKING PROCESS OVERVIEW

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.¹ 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.

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, provide notice of permanent rulemaking, and to give interested persons a reasonable opportunity to submit data or views on proposed rulemaking actions.² For the purposes of this statute, Council has sole jurisdiction over the rules in OAR 345 and therefore functions as state agency. 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 soliciting written advice on rulemaking issues from interested parties, appointing a RAC, or hosting one or more public workshops.³ More than one of these methods may be used during the course of a rulemaking.

Appointing 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 public comment period. If the Council determines that a RAC is appropriate for a rulemaking project, staff may provide a list of potential organizations and individuals that may be interested in participating so that Council may appoint RAC members. Council may also delegate the appointment of RAC members to staff. Each RAC should have enough members to ensure appropriate representation of the varied interests associated with the particular rulemaking, but not so many that the efficiency of establishing meetings and completing tasks is compromised. Staff may 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 will ask Council for its input on the number and location of any public workshops before any workshop is convened.

Staff will consider all advice provided by the Council and stakeholders when preparing draft proposed rules and may solicit additional informal advice on draft rule 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 any associated statements of need and fiscal impact 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.

EXECUTIVE ORDER 25-29

Governor Kotek issued Executive Order 25-29 on November 18, 2025⁴. This order directed several Oregon agencies, including the Oregon Department of Energy and the Energy Facility Siting Council to "evaluate existing authorities, rules, and practices to identify opportunities to streamline or increase the efficiency of siting and permitting processes within their jurisdiction for [energy] projects. . .".

Increasing the efficiency of the Council's siting process is at the heart of most of the Council's prior, current and future rulemaking endeavors, including an ongoing multi-part effort to update the Council's process rules for all stages of the energy facility siting process. Recent efforts include:

- Two rulemakings designed to reorganize the application process to assist applicants and the public in following the Council's siting process
- Updates to the Council's amendment rules, improving the clarity of the process and eliminating the possibility of a contested case.

Notably, in 2025 the Council began a review of the siting standards that represent the core of the siting process. As each of these standards is reviewed over the coming years, ensuring that the information requirements connected to these standards are both sufficient for review and not unduly burdensome is directly in line with meeting this executive order. Staff also anticipates a rulemaking to be completed early in 2026 that will remove outdated application requirements, such as requiring paper copies of all submissions to the department.

RULEMAKING ACTIVITY IN 2025

At its meeting on January 17, 2025, the Council approved its rulemaking priorities for 2025 to 2027. Since that date, the Council has completed 2 rulemaking projects. It also initiated work on several others.

Completed

Application Process Update - Phase 2

On March 21, 2025, Council authorized staff to file amended rules governing the submission of application data to the Department.

The Application Process Phase 2 rulemaking was intended to achieve one main goal: reorganize the rules so that the rules containing the Council's standards (found in OAR 345, divisions 022 through 024) also contain the information an applicant is required to submit to Council for those standards, currently located in division 21.

The goal of this reorganization was to make it easier for the developers and the public to understand how the Council's standards are connected to the information requirements that are part of applications for energy facilities. This effort prepares the rules governing the standards to be further streamlined in future, "Phase 3" rulemakings, discussed below.

2024 Site Certificate Amendment Rulemaking

On March 21, 2025, Council authorized staff to amend its rules governing the expiration, amendment, and termination of site certificates under OAR chapter 345, division 027.

The 2024 Amendment rulemaking was intended to evaluate and update the amendment process to achieve **three** main goals:

1. Improve the clarity of the rules by resolving ambiguities that have revealed themselves in the application of the rules as written.
2. Make substantive changes to improve and streamline the Council's amendment process based on lessons learned since the last revision of the amendment rules. The most significant example is the removing the possibility of a contested case.
- 3.
4. Update the rules to ensure compliance with new statutes, revised rules, and recent direction of the courts.

New and Ongoing Projects

Modernization Rulemaking

This rulemaking considers options to modernize the Council and Department's application process, including an examination of hard copy submission requirements, notice requirements—including for the Department of War—and also the possibility of requiring applicants and certificate holders to submit geographic information system (GIS) data for energy facilities. This rulemaking is intended to be an efficient use of the rulemaking process to do a handful of rulemaking updates that should be done, but make little sense to do by themselves. One such change includes a clarification of allowable phased construction, i.e., construction is allowed even when construction rights are not yet obtained for areas not yet under construction. This has always been a practice by the Department, but the rules now more clearly align with this practice.

Staff anticipates this rulemaking will be completed before April, 2026, unless Council determines the draft proposed rules should be finalized at its December.

Exemptions

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. This rulemaking effort is also taking a look at whether the Council – as directed by statute – should update the heat rate threshold needed to qualify for an exemption as a “high efficiency” cogeneration facility as allowed by ORS 469.320(2)(c)(B).

Staff anticipates this rulemaking will be completed by April 2026.

Radioactive Material Transport Fees (and Div 60 Review)

On October 25, 2024, the Council initiated a rulemaking to update the radioactive material transport fees.

Timely Communication with Tribal Governments

On September 20, 2024, Council initiated a rulemaking to improve timely communication with tribal governments.

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 is evaluating 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. Such early communication should better identify issues with proposed projects earlier in the siting process, leading to greater efficiencies in the process.

Staff anticipates this rulemaking will be completed by April of 2026.

In accordance with the rules in Oregon Administrative Rules chapter 345, division 060, any person who wishes to transport certain radioactive materials identified in federal code through Oregon must first obtain an Oregon Radioactive Materials Transport Permit. On average, around 400 permitted shipments travel through Oregon each year. Statutory direction authority for the program comes from Oregon Revised Statutes 469.605 et seq.

The permit fee amounts are currently set at \$70 for most shipments and \$500 annually for some medical and industrial shipments. 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.

During this rulemaking project staff will evaluate:

- Whether the current radioactive transport fee amounts are adequate to fund programs to prevent, prepare for, and respond to potential accidents involving the transport of radioactive material in Oregon.
- Whether additional updates to the rules found in OAR 345-060 are needed to incorporate changes to federal safety standards that have occurred since the rules were last updated.

The Nuclear Safety and Emergency Preparedness Division staff is heading up this project and providing the substantive work for this rulemaking, while Siting Division staff is taking care of the procedural work.

Staff anticipates this rulemaking will be completed in mid-2026.

Compliance

This project consists of a review of the rules for construction and operation of energy facilities under OAR 345-026-0005 to 345-026-0170. Generally, this rulemaking focuses on improving the clarity and consistency of requirements and providing additional specificity for monitoring and reporting requirements and timeframes. The intent is to further streamline the compliance process for site certificate holders and staff.

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.

Organizational Expertise and Retirement and Financial Assurance

This project consists of a review of Council's organizational expertise and retirement and financial assurance standards. Like all rulemaking projects directed at the Council's standards, this project is intended to ensure that the information requirements related to these standards are both necessary and sufficient. As each energy facility is unique, the information requirements will never be able to completely eliminate the need for the Department to issue additional information requests, but efforts will be made to reduce this. Like all efforts at updating the Council's standards, the goal is to make proving adherence to this standard and reviewing adherence to this standard more efficient and streamlined.

Staff anticipates this rulemaking will be completed sometimes in the second half of 2026.

FUTURE RULEMAKING PROJECTS

Staff has identified rulemaking projects that it believes can be reasonably expected to begin in 2026. Staff has also further identified additional projects which it recommends for consideration in 2027 and 2028. Staff welcomes any additional input from the Council on the timing or sequencing of any of the potential projects discussed below. There will also be a public comment opportunity during this agenda item at Council’s December meeting to specifically allow feedback on the rulemaking agenda.

Note that you will find placeholders in the schedule below for the “Phase 3” rulemaking projects to update Council’s standards. Staff requests Council’s guidance on which standards should be prioritized over the coming years. The suggested groupings for these placeholders is as follows:

Possible PHASE 3 Rulemakings for Council Standards	
Proposed Grouping of Standards	OAR
Organizational Expertise + Retirement and Financial Assurance (currently in rulemaking)	345-022-0010 + 345-022-0050
Structural Standard + Soil Protection	345-022-0020 + 345-022-0022
Protected Areas + Scenic Resources + Recreation	345-022-0040 + 345-022-0080 + 345-022-0100
Fish and Wildlife Habitat + Threatened and Endangered Species	345-022-0060 + 345-022-0070
Waste Minimization + Public Services + Land Use	345-022-0120 + 345-022-0110 + 345-022-0030
Historic, Cultural and Archaeological Resources	345-022-0090

PROPOSED FOR 2026

Application Process Review – Phase 3 (No 2 of 6)

This rulemaking would evaluate options to better align the application submission requirements and standards in OAR 345-022. See the chart above for possible options.

Application Process Review – Phase 3 (No 3 of 6)

This rulemaking would evaluate options to better align the application submission requirements and standards in OAR 345-022. See the chart above for possible options.

Natural Hazards Mitigation

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 recently approved in October 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. 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.

Rulemaking Projects Proposed for 2027

Mandatory Conditions

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. The intent is to make the compliance program more efficient, while still ensuring projects adhere to the site certificate requirements.

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.

Application Process Review – Phase 3 (No 4 of 6)

This rulemaking would evaluate options to better align the application submission requirements and standards in OAR 345-022, streamlining the siting process through increased efficiency. See the chart above for possible options.

Application Process Review – Phase 3 (No 5 of 6)

This rulemaking would evaluate options to better align the application submission requirements and standards in OAR 345-022, streamlining the siting process through increased efficiency. See the chart above for possible options.

Rulemaking Projects Proposed for 2028

Application Process Review – Phase 3 (No 6 of 6)

This rulemaking would evaluate options to better align the application submission requirements and standards in OAR 345-022, streamlining the siting process through increased efficiency. See the chart above for possible options.

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.

Upcoming Reviews:

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.

OAR 345-024-0503 – Carbon Standards

On July 22, 2022, the Council adopted permanent rules implementing new restrictions on the siting of fossil-fueled power plants under HB 2021 (2021) and updating existing carbon dioxide standards adopted under ORS 469.503. The rules were filed, and became effective, on July 25, 2022. One new rule, OAR 345-024-0503, was adopted as part of this rulemaking and as such a five-year review under ORS 183.405 is required to be completed by July 25, 2027.

OAR 345-022-0115 – Wildfire Prevention and Risk Mitigation

On July 22, 2022, the Council adopted a new siting standard for Wildfire Prevention and Risk Mitigation that is applicable to all types of energy facilities. The rules were filed and became effective on July 29, 2022. A five-year review under ORS 183.405 is required to be completed by July 25, 2027.

NOTE ABOUT THE LEGISLATIVE SESSION

Staff's rulemaking coordinator will be tasked with coordinating the review on any proposed bills that explicitly or potentially impact Council's standards, processes, or authority. The proposed rulemakings discussed above are reflective of this time commitment during the short session, which runs from February 2, 2026 through March 8, 2026.