



Oregon

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To: Energy Facility Siting Council

From: Tom Jackman, Rule Coordinator

Date: December 5, 2025

Subject: Agenda Item C (Action Item): Modernization Rulemaking Final Consideration for the December 19, 2025 EFSC Meeting

Attachments: Attachment 1 – Draft Proposed Rules With All Proposed Changes
Attachment 2 – Draft Proposed Rules Showing Only New Changes

STAFF RECOMMENDATION

Staff requests the Council's authorization for staff to reissue a Notice of Proposed Rulemaking based on proposed amendments to its rules as shown in Attachment 1. Should the Council approve reissuing the notice . . .

BACKGROUND

On March 21, 2025, Council initiated rulemaking to review its rules for any minor corrections and updates that would not otherwise merit their own rulemakings. At this meeting, the Council approved staff's recommended scope and directed staff to proceed without a Rulemaking Advisory Committee and instead work internally to prepare a draft of proposed rules.

On September 19, 2025, the Council approved the issuance of a notice of proposed rulemaking along with draft proposed rules to be presented for public comment. This public comment period ran through November 30, 2025. Two comments were submitted, discussed below. A public hearing was held at the Council's November 21, 2025. At this hearing, comments from the Council prompted staff to make some additional changes to the proposed rules, discussed below. The addition of these changes is behind staff's recommendation that the Council issue an updated notice of proposed rulemaking so that the public may have an opportunity to comment.

What follows is a summary of the rules and a summary of all comments received, including from the Council, followed by staff's recommended responses.

SUMMARY OF PROPOSED RULES

The draft proposed rules consist of a great many minor corrections, e.g., correction of outlining errors or incorrect references, that would otherwise qualify as "statutory minor corrections."

These changes can be done without the normal rulemaking process. However, bundling these minor changes in a single rulemaking creates a much cleaner rulemaking record. Other very minimal changes include a reformatting of OAR 345-022-0050 to make it flow better, a reversion of an inadvertent rule change done in a prior rulemaking (OAR 345-023-0030(2)) and updating the version of other agency rules that are required to be met to a more recent time period. See OAR 345-022-0060(1) and (2).

In addition to these corrections and updates, these draft rules contain the following, more substantive proposed rule changes intended to update and modernize the Council's rules:

Data Submission Requirements (OAR 345-001-0100)

Staff proposes a new rule that directs parties to submit any data used to produce maps or other geospatial data in an acceptable format as approved by the department. While many applicants are already submitting data in the preferred formats, some do not, and staff recommends introducing this new rule to clarify how data should be submitted to improve the review of data submissions as well as to enhance the compliance program.

DoW Notice (OAR 345-015-0110)

Staff proposes formalizing the process for providing the Department of War (DoW, previously the Department of Defense) notice of new energy facility applications. Staff already notifies DoW of new projects, but DoW requested that this new rule be added to formalize this process, and staff sees no reason not to do so.

Removal of Hard Copy Print Requirements (OAR 345-015-0200(2), 345-015-0310(5), 345-020-0006(2), 345-020-0016(1), 345-021-0000(7), 345-027-0110(4), 345-027-0230(3))

Staff proposes the removal of the requirement that applicants and site certificate holders must print copies of all their various submissions by default, while still allowing, where applicable, for the possibility that the Department might request copies to be printed should a member of the public request one. This is another legacy rule that made more sense when these hard copy requirements were introduced, but makes little sense today.

Removal of rule version requirements (OAR 345-022-0040(4), 345-022-0080(4), 345-022-0100(4))

When several of Council's standards were previously updated, language was inserted to help new applicants and pending applicants navigate applicability issues. Given the passage of time, these applicability provisions are no longer relevant.

Removal of preconstruction limitation (OAR 345-025-0006(5))

This proposed change would allow all energy facilities to begin preconstruction even if they lack the construction rights to all parts of the site. Access rights would still be needed for the locations to be constructed. This construction allowance currently applies to wind facilities, transmission lines and pipelines, but not to other types of energy facilities. It is not clear why this rule should only apply to wind facilities, transmission lines and pipelines and so staff proposes removing this restriction. The draft proposed rule language increases clarity and

efficiency while also ensuring there is no conflict with how the Department already implements these provisions as they relate to any conditions that apply to pre-construction.

COMMENTS ON THE RULES

Kim Peacher, on behalf of Department of War

Ms. Peacher submitted a comment indicating support for the proposed changes to formalize notice to the Department of War.

Diane Brandt, on behalf of Renewable Northwest (RNW)

RNW agrees with the proposed changes, while sharing some concerns about the proposed geospatial data requirement. Their concern is based on “the potential for additional burden on applicants to provide shapefiles, geodatabase files, or other geospatial data.” There are also concerns about the confidentiality of data.

Staff Response

The intent behind these new rules is to streamline and accelerate the review of applicant data to ensure compliance with Council’s standards as efficiently as possible. While staff understands there are concerns about the exact nature of this proposed new requirement, staff concludes that it would be inefficient to try and create exact clarity in rules, only to find that the rules are outdated as the technology changes in the next years or even months. Staff intends to work with applicants to determine what makes the most sense, taking into account not just how the data is reviewed, but how it is collected in the first place. Staff will work to create more detailed guidance that address the concerns raised by RNW.

As for the concerns about confidentiality, ORS 192.345 establishes what constitutes trade secrets, and the Department will follow all required procedures and restrictions on public disclosure for any documents that fall within this definition.

Council’s Concerns

At the public hearing held at the Council’s November meeting, the Council raised concerns about the lack of a definition for the term “construction rights” and the lack of an applicability clause for the proposed changes. To address these concerns, staff recommends new language which clarifies what a construction right is – “the certificate holder has authority to construct in the area, e.g., in the form of a deed, lease or court-approved condemnation right” and adds a retroactivity clause to the rules for this proposed change to the end of 345-025-0006. While Attachment 1 has all the proposed draft rules, including the most recent proposed edits, these new changes are specifically highlighted in Attachment 2, to make it easier to see exactly what changes are being proposed since the rules were filed in the initial notice of proposed rulemaking.