Oregon
Tina Kotek, Governor

OREGON DEPARTMENT OF ENERGY

550 Capitol St. NE
Salem, OR 97301
Phone: 503-378-4040
Toll Free: 1-800-221-8035
FAX: 503-373-7806
www.oregon.gov/energy

To: Energy Facility Siting Council

From: Thomas Jackman, EFSC Rules Coordinator

Date: November 6, 2026

Subject: Item K (Action Item): Compliance Rulemaking Final Consideration for the November 19–20, 2026 EFSC Meeting

Attachments: Attachment 1 – Draft Rules - Redline
Attachment 2 – Draft Rules - Clean
Attachment 3 – Public comments

STAFF RECOMMENDATION

Staff requests Council's authorization for staff to issue a Permanent Rulemaking Order based on proposed amendments to its compliance and enforcement rules as shown in Attachment 1. Attachment 2 contains the same draft rules, but with all changes accepted to improve readability.

BACKGROUND

The Energy Facility Siting Council (Council) has continuing authority over energy facilities for which it has issued site certificates and relies on the Department of Energy ("Department") to support the Council's ongoing compliance oversight responsibilities. The Council's existing compliance rules, located primarily in OAR chapter 345, division 26, address construction and operation reporting, inspections, correspondence with other agencies, and incident notification. The Council's enforcement rules, located in OAR chapter 345, division 29, address reports by responsible parties, notices of violation, civil penalties, and suspension or revocation of site certificates.

Over time, implementation of the current rules has revealed several gaps and ambiguities. The current rules identify many compliance obligations, but do not always describe the process for demonstrating compliance, the timing of required submittals, the Department's review role, or how compliance issues should be resolved before formal enforcement is necessary. This has created uncertainty for certificate holders and has made it more difficult for Department staff to administer a consistent, predictable compliance program across facilities.

The proposed rules are intended to make the Council's compliance program clearer and more practical by:

- Clarifying what certificate holders must submit before construction, during construction, before operation, and after operation begins;
- Providing clearer rules for phased or component-based construction compliance review;
- Improving the Department's ability to maintain accurate site certificate records and understand the facility as constructed and operated;
- Clarifying how the Department should respond to requests for compliance review;
- Creating additional tools for resolving compliance issues before formal enforcement is necessary;
- Reducing duplicative reporting by allowing certificate holders to rely on prior submissions and reports submitted to other agencies or the Department; and
- Clarifying the relationship between Council compliance oversight and compliance programs administered by other federal, state, and local agencies.

After the Council approved the Compliance rulemaking in June 2025, staff convened a Rules Advisory Committee (RAC) to assist in the development of draft proposed rules. The RAC included representatives from certificate holders and utilities, renewable energy interests, state agencies, resource interests, public interest participants, Council representatives, Department staff, and counsel from the Oregon Department of Justice.

Staff convened three RAC meetings (Dec 2025, Feb 2026, and May 2026) to discuss the existing compliance rules, identify implementation issues, review potential solutions, and receive feedback on draft rule language. The RAC discussed the following major rule clusters:

- Pre-construction compliance planning and construction commencement notification;
- Inspections and requests for compliance review;
- Construction, final design, and annual reporting requirements;
- Administrative updates to site certificate facility descriptions;
- Reliance on federal, state, or local agency permits, approvals, reports, or compliance determinations;
- Incident notification;
- Responsible party reporting; and
- A new pre-enforcement notice process for potential site certificate and related violations.

At the third RAC meeting, staff reviewed the draft redline with the RAC and invited comments on the draft language. RAC participants generally supported the goals of improving clarity, reducing duplication, and creating a more graduated compliance process. However, RAC members and written commenters identified several implementation concerns, some of which resulted in changes to the draft proposed rules (discussed below).

The RAC discussion and written comments focused primarily on:

- Ensuring that the rules allow certificate holders to demonstrate pre-construction compliance by facility component or phase, while allowing the Department to require facility-wide review when phased review would be duplicative, fragmented, incomplete, or insufficient;

- Avoiding unnecessary duplication of information previously submitted to the Department;
- Allowing facilities with mixed construction and operational status to report compliance in a practical way;
- Protecting security-sensitive or legally restricted facility information, including geospatial data;
- Clarifying that the Department may rely on permits, approvals, inspections, or compliance determinations issued by other agencies where those materials are sufficient to demonstrate compliance with Council requirements;
- Maintaining a clear reporting deadline for incidents and potential violations; and
- Providing a pre-enforcement step that allows the Department and responsible party to exchange information before a formal notice of violation is issued, when appropriate.

Staff incorporated changes responsive to RAC feedback into the proposed rules presented to Council in June 2026.

This report contains:

- A summary of the proposed compliance and enforcement rules in OAR chapter 345, divisions 26 and 29;
- A summary of RAC feedback and staff's response; and
- A review of public comments and staff's final recommendations for adoption.

SUMMARY OF PROPOSED AMENDED COMPLIANCE AND ENFORCEMENT RULES

The proposed changes to the Council's compliance and enforcement rules can be divided into roughly three categories:

1. Improve the clarity of the rules by resolving ambiguities that have appeared in the application of the rules as written.
2. Fill process gaps where existing rules identify a compliance responsibility but do not provide sufficient direction on timing, submittal requirements, Department review, or certificate holder obligations.
3. Provide the Department and Council with additional tools to address compliance issues in a more predictable, graduated, and efficient manner.

These changes can be thought of in three categories:

1. Minor changes;
2. Modest changes; and
3. Significant changes.

The category of minor changes includes things like the following:

- Changing the title of Division 26 from "Construction and Operation Rules for Facilities" to "Site Certificate Compliance" to better reflect the purpose of the Division;
- Removing the existing purpose rule in OAR 345-026-0005 because the proposed Division 26 rules now state specific compliance obligations directly. Staff does not intend this deletion to narrow the Council's public health, safety, welfare, or environmental

protection purposes, which remain reflected in ORS chapter 469, Council standards, site certificate conditions, and the substantive compliance rules;
- Removing the existing legislative authority rule in OAR 345-026-0010 because the rule restates statutory authority that exists independently in ORS chapter 469. Staff does not intend this deletion to narrow or alter the Council's continuing authority over certified facilities;
- Removing rule language stating that certificate holders must comply with applicable federal agency requirements, because those obligations exist independently under federal law and do not need to be restated in Council rule (OAR 345-026-0015);
- Updating rule terminology throughout to refer to "site certificate terms and conditions" rather than "conditions and warranties" (throughout the rules);
- Updating internal cross-references, including references to the Council's amendment rules in OAR chapter 345, division 27 (throughout the rules);
- Correcting grammatical errors and outdated language in Division 29; and
- Modifying rule language throughout to improve readability and organization.

The second category of more moderate changes consists of the following:
- Adding language to OAR 345-026-0015 and OAR 345-029-0003 clarifying the intended applicability of the revised Division 26 and Division 29 rules to existing and future site certificates and site certificate amendments, subject to any controlling site certificate conditions (OAR 345-026-0015(2); OAR 345-029-0003(3));
- Clarifying that pre-construction compliance review may occur by facility component or phase before construction of that component or phase begins (OAR 345-026-0048(1), (1)(a), and (3));
- Clarifying that the Department may require certain conditions to be addressed on a facility-wide basis when phased review would result in duplicative review, fragmented mitigation or monitoring, incomplete evaluation, or insufficient information to determine compliance (OAR 345-026-0048(1)(b));
- Revising the inspection rule to clarify that inspections may include materials, activities, related or supporting facilities, premises, and records to the extent reasonably related to determining compliance (OAR 345-026-0050(1)(a));
- Replacing "requests for inspections" with "requests for compliance review" to clarify that a public request may result in a Department review, an information request, referral to another agency, or a site inspection, depending on the circumstances (OAR 345-026-0050);
- Clarifying that the Department must provide the requestor written notice of its determination on a request for compliance review and whether a site inspection is warranted (OAR 345-026-0050(2)(g));
- Adding authority for the Department to require a corrective action plan after a compliance review when the Department identifies a potential site certificate compliance issue or potential threat to public health and safety (OAR 345-026-0050(2)(j));
- Allowing the Department to require interim protective measures pending completion of a corrective action plan (OAR 345-026-0050(2)(j)(A));

- Clarifying that certificate holders may avoid duplicative reporting by identifying prior submittals and explaining why the information remains current and applicable (OAR 345-026-0080(1)(d));
- Clarifying that reports must be submitted in the form and manner requested by the Department, including through templates, tables, electronic formats, geospatial data formats, and standardized submittal requirements reasonably related to compliance review and record maintenance (OAR 345-026-0080(7); OAR 345-026-0080(7)(a)–(b));
- Clarifying that the Department may require additional, revised, or differently formatted information if a report is incomplete, unclear, inconsistent with the site certificate, or insufficient to demonstrate compliance (OAR 345-026-0080(8); OAR 345-026-0080(8)(a));
- Clarifying that certificate holders may use reports submitted to other agencies or the Department to satisfy reporting requirements when those reports provide the information needed for the Department to determine compliance (OAR 345-026-0080(6); OAR 345-026-0080(6)(a)–(d); OAR 345-026-0105(1)); and
- Revising incident notification requirements to identify the information required in an initial notice and link certain incidents or patterns of incidents to the responsible party reporting requirements in Division 29 (OAR 345-026-0170(6); OAR 345-026-0170(7)).

The third group of changes includes the most significant policy and implementation changes.

Pre-Construction Compliance Plans and Phased Review – OAR 345-026-0048

The proposed rules rewrite OAR 345-026-0048 to clarify pre-construction compliance review for facilities built in phases or by component. Before construction of a facility, facility component, or phase, the certificate holder must demonstrate compliance with all applicable pre-construction site certificate terms and conditions. If construction will occur in phases, the certificate holder must identify the conditions applicable to each component or phase and any conditions that should be addressed on a facility-wide basis.

The proposed rule also allows the Department to require facility-wide review when phased review would result in duplicative review, fragmented mitigation or monitoring, incomplete evaluation of a condition, or insufficient information to determine compliance. This preserves flexibility for phased construction while allowing the Department to avoid inefficient or fragmented review.

ODFW specifically asked whether the rule would allow facility-wide treatment of mitigation or monitoring conditions when phase-by-phase review would result in multiple small or fragmented mitigation reviews. Staff understands the proposed rule to provide that authority where facility-wide review is necessary for a complete and efficient compliance determination. Finally, the proposed rule requires written Department authorization before construction may begin on the component or phase reviewed, creating a clear endpoint for pre-construction compliance review.

Inspections and Compliance Review – OAR 345-026-0050

The existing inspection rule authorizes Council and Department representatives to inspect a facility during construction, operation, and retirement and allows any person to request an inspection if the person believes a violation has occurred or may occur. The existing rule, however, assumes that the primary response to a public request is an inspection. In practice, not every concern requires or warrants a site inspection. Some concerns may be resolved through review of existing records, a request for information, referral to another agency, or other compliance review.

The proposed rule therefore retitles OAR 345-026-0050 as "Inspections and Compliance Review" and changes "requests for inspections" to "requests for compliance review." Under the proposed rule, a person may request that the Department review a certificate holder's compliance with its site certificate if the requestor believes that a violation of a Council order or site certificate term or condition has occurred or may imminently occur, or that a situation exists that may lead to unnecessary exposure to hazardous materials or unsafe or dangerous conditions.[1]

The request must identify the site certificate condition or requirement allegedly not being followed, include supporting facts, and state whether the request includes a request for a site inspection. If the request concerns matters of state, federal, or local law not administered by the Council, the Department must forward the request to the appropriate agency.

The proposed rule also clarifies the Department's review obligation. The Department must promptly evaluate allegations related to matters under Council jurisdiction and give the requestor written notice of its determination, including the reasons for the determination and whether a site inspection is warranted. The requestor may petition the Council to review the Department's determination.

Corrective Action Plan - OAR 345-026-0050(2)(j)

The proposed rules add a corrective action plan process to OAR 345-026-0050. After a compliance review, if the Department identifies a potential site certificate compliance issue or potential threat to public health and safety, the Department may require the certificate holder to submit a corrective action plan identifying the issue, interim measures, known causes, corrective actions, a completion schedule, and reporting needed to verify completion. This process gives the Department and certificate holders a clearer tool for resolving compliance issues before formal enforcement is necessary, while preserving the Council's and Department's authority to pursue enforcement under Division 29 when warranted.

The proposed rule also clarifies that the Department may identify potential violations of applicable construction or operational conditions regardless of whether the certificate holder has formally reported beginning commercial operation. This language is intended to address facilities that may be testing, commissioning, partially operating, repowering, or otherwise moving through construction and operation in a non-linear way, without making operational conditions enforceable before they apply to the activity occurring at the facility.

[1] See OAR 345-026-0050(2).

Reporting Requirements for Energy Facilities – OAR 345-026-0080

OAR 345-026-0080 is the rule with the most significant proposed restructuring. The existing rule combines construction reporting, annual reporting, reports submitted to other agencies, and annual report content requirements in a single structure. The rule has been workable, but staff believes it no longer provides sufficient direction for the current compliance program.

The proposed rule reorganizes reporting requirements around the lifecycle of a facility:

- Construction compliance reports;
- Final construction compliance and facility design reports;
- Annual reports;
- Annual report contents;
- Mixed phasing or stages;

Construction Compliance Reports

The existing rule requires a semiannual construction progress report during construction. The proposed rule changes this to a semiannual construction compliance report. The purpose of the change is to clarify that the report should do more than describe construction progress. The report must also provide sufficient documentation and evidence to demonstrate compliance with site certificate terms and conditions applicable during the reporting period.

The report must identify any change to the facility made during the reporting period without an amendment of the site certificate under OAR 345-027-0350, including any written evaluation required under OAR 345-027-0355.

The proposed rule also adds anti-duplication language. A certificate holder is not required to duplicate information previously submitted to the Department if the construction compliance report clearly identifies the previous submission and provides a reasonable explanation of why the information remains current and applicable. However, if a construction compliance report relies on a prior submission, the report must identify the specific document, date of submittal, applicable condition, and location within the prior submittal where the information can be found.

Final Construction Compliance and Facility Design Report

The proposed rule adds a new final construction compliance and facility design report requirement. Before beginning operation, the certificate holder must submit a final construction compliance report demonstrating compliance with site certificate terms and conditions required to be satisfied before operation. The report must include the date the facility began, or is expected to begin, operation. If the report identifies an expected date of operation, the certificate holder must notify the Department of the actual date of operation no later than 10 days after operation begins.

The final construction compliance report must also include a final facility design report in the form and manner requested by the Department. The final facility design report must include:

- A narrative description of the facility, as constructed;

- A table identifying each constructed facility component and each constructed related or supporting facility;
- A description of any approved but unconstructed facility component, route, corridor, alternative, or related or supporting facility;
- A description of any site certificate condition that applies solely to an approved but unconstructed or unimplemented component, corridor, activity, or impact;
- Maps showing the site boundary and final locations of significant components; and
- Geospatial data for the site boundary and significant components in a format requested by the Department.

This report is intended to improve the Department's ability to understand the facility as actually constructed, maintain the site certificate record, and evaluate whether an administrative update under proposed OAR 345-026-0088 is appropriate.

Annual Reports
The existing rule requires annual reports by April 30. The noticed proposal advanced that date to January 31. Staff now recommends March 31 in response to PGE's comment, while retaining the ability to agree to a different reporting date.

The proposed rule removes general facility-status reporting and reliability/capacity-factor reporting for electric power plants. Staff proposes to remove those requirements because those categories have provided limited value for determining compliance with site certificate conditions and Council standards. Staff believes more targeted reporting is available through incident reports, construction compliance reports, annual compliance reports, facility modification reports, financial assurance documentation, and condition-specific reporting required by individual site certificates.

The proposed annual compliance report must describe the certificate holder's compliance with all site certificate conditions applicable during the reporting period. It must describe implementation of each monitoring plan and mitigation plan, provide supporting documentation and rationale showing that goals, performance standards, or success criteria are being met, and describe significant changes to monitoring or mitigation programs.

Facility Modification Reports
The proposed rule expands the facility modification reporting requirement.

For any change that modifies, relocates, removes, or replaces a facility component, the facility modification report must describe the affected component, explain the reason for the change, identify the final or proposed location, and include any geospatial information requested by the Department. If the certificate holder determines that a change does not require an amendment, the report must include or identify the certificate holder's written evaluation supporting that determination.

Mixed Phasing or Stages
The proposed rule adds a provision addressing facilities where different components are in different compliance statuses during the same reporting period. If different facility components are in pre-construction, construction, operation, or retirement during the same reporting period, the certificate holder may identify the status of each component and address the site certificate conditions applicable to each component during that reporting period.

Staff added this language to address the practical reality that large or complex facilities may not move through construction and operation as a single unit. This may occur during phased construction, repowering, component replacement, or other staged development or retirement activities.

Reports Submitted to Other Agencies or the Department
The proposed rule retains and expands the existing concept that certificate holders may use reports submitted to other agencies to satisfy Council reporting requirements. The proposed rule also allows use of reports submitted to the Department under another requirement.

To rely on another report, the certificate holder must identify the source of the excerpted report and explain how the excerpt satisfies the applicable requirement. The certificate holder must provide a citation, page reference, table reference, or other clear cross-reference sufficient for the Department to locate the information relied upon. The Department or Council may request a full copy of any excerpted report.

This language is intended to reduce duplicative reporting while preserving the Department's ability to determine compliance with the site certificate, Council standards, Council rules, or a Council order.

<u>Administrative Update of the Facility Description – OAR 345-026-0088 (NEW RULE)</u>
Staff proposes a new rule, OAR 345-026-0088, to allow administrative updates to the facility description in a site certificate.

The Council's site certificates often approve multiple facility components, routes, corridors, alternatives, dimensions, and design options. Over time, the facility as constructed may differ from the full range of options approved in the site certificate. For example, a certificate holder may construct fewer facility components than approved, use one approved corridor but not another, or construct the facility at a different final dimension or capacity within the range approved by the Council.

The existing compliance rules provide processes for amendments and amendment determinations, but they do not provide a clear process for updating the site certificate record to describe the facility as actually constructed or operated where no amendment is required. This can make long-term compliance review more difficult because the site certificate may continue to include descriptions, options, or conditions tied to components or impacts that were approved but never constructed or implemented.

The proposed rule allows the Department, following receipt of the final facility design report or after determining that a facility modification does not require an amendment, to update the site certificate to accurately describe the facility as constructed or operated. The proposed rule would also allow the Department to revise or remove site certificate conditions as needed to reflect the facility as built and to facilitate future inspections.

The proposed rule is intended to allow the site certificate to be maintained as an accurate compliance document, but it is not intended to authorize new construction, expand facility authorization, approve new impacts, or substitute for the Council's amendment process. The rule includes important limitations. Before expiration of the construction deadline in the site certificate, the Department may revise or remove a site certificate condition only at the request of the certificate holder. After expiration of the construction deadline, the Department may revise or remove a site certificate condition on its own initiative, but is not required to do so.

Staff believes this rule would improve the accuracy and usefulness of site certificates as compliance documents. If a certificate holder seeks authority to construct or operate something not previously approved by the Council, the certificate holder must use the applicable amendment or amendment determination process in Division 27.

Reliance on Federal or Other State Agencies – OAR 345-026-0105

The proposed rules retitle OAR 345-026-0105 from "Correspondence With Other State or Federal Agencies" to "Reliance on Federal or Other State Agencies" and narrow the rule's focus.

Existing OAR 345-026-0105 requires broad exchange of correspondence related to statutes, rules, and local ordinances on which the Council determined compliance. RAC participants raised concerns that this language could be read to require duplicative submission of agency correspondence or reports, even where another agency has primary subject matter expertise and an established compliance program.

In response, proposed OAR 345-026-0105 makes it clear that a certificate holder needs to provide another agency's permit, approval, report, correspondence, or other document only when they rely on that document to demonstrate compliance with a site certificate condition, Council standard, Council rule, or Council order.

The proposed rule also addresses legally restricted or security-sensitive information, including geospatial data. If a certificate holder asserts that state or federal law restricts submission of requested information, the certificate holder must identify the information, the legal basis for the restriction, and any alternative form of information sufficient for the Department to determine compliance. The Department may approve an alternative form, scale, format, or level of detail when necessary to comply with confidentiality, security, or critical infrastructure requirements.

Incident Notification – OAR 345-026-0170

The existing incident notification rule requires the certificate holder to notify the Department within 72 hours of certain occurrences involving the facility, including attempts to interfere with safe operation, significant natural or human-caused events such as fire or explosion, and fatal injuries.

The proposed rule retains the 72-hour notification deadline but clarifies and expands the list of reportable incidents. The proposed rule now includes:

- Attempts to interfere with safe operation;
- Significant natural events, including fire, earthquake, flood, tsunami, or tornado;
- Significant human-caused events, including fire, spill, explosion, vandalism, or other events that could affect public health, safety, the environment, or compliance with the site certificate;
- Fatal injuries at the facility; and
- Mechanical failures that could impact public health, safety, or the environment or result in a violation of a site certificate condition.

The proposed rule also identifies what must be included in the initial notice to the extent known at the time of notice: the date, time, and location of the incident; a brief description of the incident; immediate actions taken to protect public health, safety, or the environment; and the name and contact information of a representative who can provide additional information.

Finally, the proposed rule clarifies the relationship between incident notification under Division 26 and responsible party reporting under Division 29. If the incident or pattern of incidents may constitute or result in a violation described in OAR 345-029-0003, the certificate holder must comply with OAR 345-029-0010. The written report required under OAR 345-029-0010 must identify relevant site certificate conditions, describe actual or potential violations, and describe corrective actions taken or intended to address the incident and prevent recurrence.

Staff believes this structure provides a practical initial notification requirement while preserving the more detailed reporting requirement when an incident may involve a violation.

Responsible Party Reporting – OAR 345-029-0010

The existing OAR 345-029-0010 requires a responsible party to notify the Department as soon as reasonably possible whenever the responsible party becomes aware of conditions or circumstances that may violate a site certificate, Council order, or Department order. The rule also requires corrective action and a written report within 30 days of discovery.

The proposed rule changes the initial notification deadline to within 72 hours after discovering the conditions or circumstances. Staff believes a defined outer deadline – in addition to being consistent with a similar reporting deadline in division 26 – provides clearer expectations for both the certificate holder and the Department. The proposed rule also clarifies that the initial notification must include actions taken or to be taken to correct the potential violation.

The 30-day written report requirement is retained.

Pre-Enforcement Notice of Siting Division Violations – OAR 345-029-0015

The proposed rules add OAR 345-029-0015, creating a pre-enforcement notice process for site certificate and related energy facility violations. Existing Division 29 rules allow the Department to issue a notice of violation when it determines that a violation has occurred, but they do not provide a formal intermediate step for siting-related compliance issues. While Division 29 includes a pre-enforcement process for radioactive materials-related violations, that process does not apply to site certificate compliance issues.

Proposed OAR 345-029-0015 would allow the Department, or the Council by direction, to issue a pre-enforcement notice before a notice of violation. The rule identifies factors for determining when a pre-enforcement notice is appropriate, describes the information that must be included in the notice, and provides the responsible party an opportunity to respond, propose corrective action, and request an enforcement conference. It should improve consistency, encourage early correction of compliance issues, and give certificate holders a clear opportunity to respond before the Department determines whether to issue a notice of violation. The rule also preserves the Department's ability to proceed directly to a notice of violation, civil penalty, suspension, or revocation when warranted.

Applicability of Division 26 and Division 29 Revisions

The proposed rules add applicability language in OAR 345-026-0015 and OAR 345-029-0003.

The proposed language states the Council's intent that the revised Division 26 and Division 29 rules apply to site certificates and site certificate amendments issued after adoption and apply to site certificates and site certificate amendments issued before adoption, except to the extent that the rules conflict or are inconsistent with a condition contained in a site certificate or amendment.

Staff's intent is that the revised compliance and enforcement procedures apply to compliance activities occurring after the effective date of the rules, including compliance activities for existing site certificates, while preserving the controlling effect of specific site certificate conditions where a conflict exists. Staff does not intend the applicability language to reopen past compliance determinations, impose penalties for conduct that occurred before the effective date of the rules based on newly adopted procedural requirements, or override specific site certificate conditions.

RAC FEEDBACK AND STAFF RESPONSE

RAC participants generally supported the goal of making the Council's compliance program more predictable, more efficient, and more useful to both certificate holders and the Department. The most substantive feedback related to implementation of the proposed rules.

First, RAC participants requested that the pre-construction compliance rule preserve flexibility for phased, component-based, or staged construction. Staff responded by retaining the ability to demonstrate compliance by component or phase and by adding language allowing the

Department to require facility-wide treatment when phased review would be duplicative, fragmented, incomplete, or insufficient.

Second, as noted above, ODFW raised concerns regarding how phased review would apply to mitigation and monitoring obligations. Staff understands the proposed language to allow the Department to require facility-wide treatment of mitigation or monitoring conditions where appropriate, while also allowing mitigation obligations to be implemented in relation to the timing of impacts where consistent with the site certificate and applicable standards.

Third, certificate holder representatives requested clarification that construction compliance reports should not require repeated resubmission of the same materials. Staff responded by adding specific anti-duplication and cross-reference language in OAR 345-026-0080.

Fourth, certificate holder representatives raised concerns regarding sensitive geospatial data and information subject to confidentiality or security restrictions. Staff responded by adding language in OAR 345-026-0105 allowing certificate holders to identify legal restrictions and propose alternative forms of information sufficient for the Department to determine compliance.

Fifth, certificate holder representatives raised concerns that OAR 345-026-0105 could be interpreted to require the Department to duplicate compliance programs administered by specialized federal, state, or local agencies. Staff responded by focusing the language of the rule to better indicate what is intended.

Sixth, RAC participants discussed whether incident and potential violation reporting should use "as soon as reasonably possible" or a fixed 72-hour deadline. Staff retained a 72-hour deadline in the draft rules to provide a clear outside deadline for notification.

Finally, RAC participants supported the concept of a pre-enforcement notice process but emphasized that it should provide a practical opportunity to exchange information before formal enforcement, while not preventing the Department or Council from taking immediate action when warranted. Staff believes the proposed OAR 345-029-0015 accomplishes this balance.

FORMAL RULEMAKING

At its June 26, 2026 meeting, Council authorized staff to file a Notice of Proposed Rulemaking. Staff filed the notice with the Secretary of State on July 30, 2026. Council held the public hearing on August 21, 2026, and the written comment period closed September 25, 2026. Staff received written comments from NextEra Energy Resources, NW Natural, and Portland General Electric.

PUBLIC COMMENTS

Oral Comments and Council Discussion

No public comments were received at the August 21 hearing. During Council discussion, Chair Condon emphasized follow-up deadlines for correcting compliance issues. Council Member Walton supported early notice and raised concerns about repeated noncompliance and penalties. Staff recommends implementing the proposed corrective action and pre-enforcement procedures with specific response and completion dates appropriate to the issue. The proposed rules preserve formal enforcement when voluntary correction is unsuccessful or immediate action is warranted. Staff does not recommend adding a general penalty increase to this rulemaking.

Written Comments

NextEra and NW Natural generally support the objective of a clearer and more efficient compliance program. Their requested changes, and PGE's request concerning the annual report deadline, are discussed below. Staff recommends changing the default annual reporting deadline to March 31 in response to PGE. Staff recommends no rule changes in response to NW Natural and no action on NextEra's requests in this rulemaking.

Administrative Certificate Holder Updates and Certificate Splits

NextEra requests two new pathways under OAR 345-026-0088: administrative changes of certificate holder between affiliates and administrative division of an approved facility into multiple facilities and certificates. Each pathway would require the same parent company, continued reliance on that parent's organizational expertise and financial resources, written acceptance of certificate obligations, and supporting documentation. Split requests would identify the allocation of components, conditions, and obligations. NextEra also proposes conforming amendment exemptions in Division 27, a written Department determination, Council oversight, and a prohibition against expanded facility authorization.

NextEra explains that permitting often precedes final customer, financing, and interconnection arrangements. Phased development and separate project entities may be needed to accommodate those arrangements without changing previously evaluated components or impacts. It identifies prior affiliate transfers and splits as examples where a streamlined process could reduce cost and delay while preserving completed environmental review.

Staff Response

Staff is open to exploring NextEra's requests in a future rulemaking. However, changes to the Division 27 amendment process for site certificate splits were not included in the Notice of Proposed Rulemaking and are outside this rulemaking's scope. Any future proposal should provide the public notice of those changes and an opportunity to comment.

Staff recommends that Council take no action on NextEra's requests in this proceeding. The administrative facility description update rule would proceed as noticed, without the requested affiliate transfer or certificate split pathways, related Division 27 exemptions, or other revisions in response to these comments.

Sensitive Infrastructure Information and Geospatial Submissions

NW Natural objects to routine collection of precise component locations and downloadable geospatial data without adequate consideration of pipeline safety and transportation security requirements. It distinguishes ordinary boundary maps from datasets revealing component configuration, function, and criticality. It notes that federal Sensitive Security Information requirements can govern recipients, marking, safeguarding, and public access even when submission to a state agency is not categorically prohibited.

NW Natural proposes exemptions from precise geospatial and detailed component-location reporting for natural gas pipelines, surface facilities associated with underground gas storage, and liquefied natural gas storage facilities. The exemptions would apply to final design reports, annual modification reports, and Department submission requirements. It also requests limiting location detail to that necessary for an identified certificate condition and broadening OAR 345-026-0105(2) to address safety and security concerns beyond an absolute legal restriction. It requests mandatory approval of sufficient protective alternatives.

Staff Response

Staff does not recommend any rule changes. If NW Natural believes specific information needed to demonstrate compliance with its site certificate conditions is protected or restricted, it should identify the information, cite the specific state or federal statutes and regulations it contends apply, and explain how those provisions protect or restrict the information.

The Department can evaluate those claims when they arise and determine how to obtain and handle the information consistently with applicable law. Proposed OAR 345-026-0105(2) already provides a process for identifying legal restrictions and considering sufficient alternative submissions. Staff recommends retaining the proposed geospatial, facility information, and alternative submission provisions as noticed. The requested categorical exemptions and other revisions are not needed.

Duplicative Reporting and References to Prior Submissions

NW Natural states that requiring recreation of maps or datasets already provided to the Department or specialized regulators would conflict with the rulemaking's objective of reducing duplication. It requests that OAR 345-026-0080(6)(d) permit a clear reference to a prior submission, as well as an excerpted report, when sufficient to demonstrate compliance.

Staff Response

Staff does not recommend changing the excerpt requirement. A holder may copy relevant information already compiled and submitted to another agency, or provide the relevant pages or portions of that report. This requires no new analysis or recreation of the underlying information. Staff does not consider providing those excerpts duplicative or burdensome. Excerpts allow the Department to review the information relied upon and maintain a clear compliance record. A reference alone should not replace an excerpt where the proposed rule requires one. The cross-reference options in the noticed proposal remain available where applicable.

Annual Report Deadline
PGE objects to changing the annual report deadline from April 30 to January 31. It explains that detailed supporting documentation requires substantial work and that other regulatory reporting obligations overlap during the first quarter. PGE acknowledges that April 30 leaves limited time for Department review and inspections. It proposes March 31 as a compromise that provides reports earlier while allowing additional preparation and verification time.

Staff Response
Staff recommends changing the default annual report deadline in OAR 345-026-0080(3) to March 31. This provides reports one month earlier than the existing deadline while allowing certificate holders additional time after year-end to compile and verify information. Staff recommends retaining the mutual-agreement provision for a different reporting date. Incident notification, construction reporting, and other applicable reporting obligations would retain their separate deadlines.

FINAL RECOMMENDATIONS
Staff recommends that Council:
• Adopt the proposed rules with March 31 as the default annual reporting deadline under OAR 345-026-0080(3).
• Make no rule changes in response to NW Natural. Retain the proposed information, geospatial, alternative submission, and excerpt requirements. Evaluate specific confidentiality or security claims when the holder identifies the information and applicable statutes or regulations.
• Take no action on NextEra's requests because the amendment process changes were not noticed and are outside this rulemaking's scope. The requests may be explored in a future rulemaking.

Staff requests authorization to issue a Permanent Rulemaking Order with the March 31 deadline and any additional changes directed by Council. The revised procedures would apply after their effective date, including to existing certificates, subject to controlling certificate conditions. They would not reopen past compliance determinations or impose new procedural penalties for earlier conduct.