

RAC Review Guide

Draft Proposed Compliance Rule Revisions

OAR Chapter 345, Divisions 26 and 29

Purpose of this guide

The draft proposed rules are intended to fill gaps in EFSC’s compliance process where the existing rules provided limited direction. This guide is meant to help RAC members review the draft efficiently. It does not replace the redline. Instead, it explains what the draft is trying to do, why those changes were proposed, and which changes may deserve closer review because they affect certificate holder obligations, Department discretion, Council oversight, public participation, or enforcement procedure.

Overview

The existing compliance rules establish the basic framework for inspections, reporting, incident notice, and enforcement. In practice, however, several parts of the compliance process have required case-by-case direction because the rules did not clearly explain what should happen at important points in the life of a facility. The draft proposed rules attempt to make that process more predictable by adding clearer procedures and expectations.

- Clarify what must happen before construction may begin, especially when a project is built in phases.
- Clarify what information must be provided during construction, before operation, and during operation.
- Create a clearer path for updating the site certificate so the certificate accurately reflects the facility that was actually built.
- Clarify how compliance reviews, corrective action plans, and interim protective measures may be used before or apart from formal enforcement.
- Create a pre-enforcement process for siting-related violations before a formal notice of violation or civil penalty is issued.
- Expand incident-notification requirements so the Department receives timely notice of events that may affect public health, safety, the environment, or site certificate compliance.
- Clarify information-sharing expectations for reports and correspondence involving other agencies.

The intent is not to hide difficult issues from the RAC. Some changes may be viewed as increasing certificate holder obligations, expanding Department discretion, reducing uncertainty for staff, or changing how quickly the Department may act when a compliance issue arises. RAC members are encouraged to focus on whether the draft strikes the right balance between predictability, fairness, administrative efficiency, public transparency, and protection of public health, safety, and the environment.

At-a-glance summary of major proposed changes

Topic	Rule sections	What the draft is trying to do	Issues likely to interest RAC members
Pre-construction compliance and phased	OAR 345-026-0048	Clarify that construction cannot begin until	Whether phased review is workable; when the

construction		applicable pre-construction conditions have been addressed and the Department has authorized the relevant phase or component.	Department may require facility-wide review; whether written authorization before construction is too restrictive or necessary.
Inspections and compliance reviews	OAR 345-026-0050	Modernize inspection authority and create a more structured process for public compliance review requests.	Scope of inspection access; confidentiality for employees; how public requests are screened; whether Department review should trigger inspection.
Corrective action plans and interim protective measures	OAR 345-026-0050	Allow the Department to require corrective action planning and interim protective measures when a compliance issue or safety concern is identified.	Whether this gives the Department too much discretion; how it relates to enforcement; what procedural protections should apply.
Construction, final design, and annual reporting	OAR 345-026-0080	Clarify what information is required during construction, before operation, and in annual reports, including final design and geospatial information.	Reporting burden; geospatial data requirements; ability to rely on prior submissions; reduced duplication; financial assurance reporting.
Administrative update of facility description	OAR 345-026-0088	Create a process to update the site certificate after construction or non-amendment changes so it reflects the facility as built or operated.	Whether updates could change conditions without a full amendment; Council approval role; treatment of unbuilt components; timing before or after construction deadlines.
Correspondence with other agencies	OAR 345-026-0105	Clarify what correspondence and reports must be exchanged when they relate to statutes, rules, or ordinances relied on by Council.	Confidentiality; public records treatment; burden of exchanging agency correspondence; full reports vs. summaries.
Incident notification	OAR 345-026-0170	Expand and clarify the events that require notice to the Department and what the initial notice must include.	Whether 72 hours is appropriate; scope of human-caused events and mechanical failures; overlap with enforcement reporting.
Pre-enforcement process	OAR 345-029-0015 and related Division 29 rules	Create a step before formal notice of violation that allows information exchange, corrective	Whether this improves fairness or delays enforcement; when it should be optional;

		action discussion, and possible withdrawal or amendment before escalation.	relationship to contested case rights.
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1. Pre-construction compliance and phased construction

Primary rule sections: OAR 345-026-0048

What the draft does

- Renames and reframes the rule as “Pre-Construction Compliance Plans and Construction Commencement Notification.”
- Clarifies that before construction of a facility, component, or phase, the certificate holder must demonstrate compliance with applicable pre-construction site certificate terms and conditions.
- Requires certificate holders proposing phased construction to identify the conditions applicable to each component or phase, as well as any conditions that apply facility-wide.
- Allows the Department to require a condition to be addressed on a facility-wide basis if phased review would be duplicative, incomplete, or insufficient to determine compliance.
- States that construction cannot begin until the certificate holder receives written authorization from the Department approving the component or phase under review.

Gap the draft is trying to fill

The existing rule required a compliance plan and prompt construction-start reporting, but it did not clearly describe how pre-construction compliance review works when a project is built in phases, how facility-wide conditions should be handled, or whether construction may begin before the Department has completed review for the relevant phase or component.

Questions for RAC members

- Is the rule clear enough about what a certificate holder must submit before beginning construction of a phase or component?
- Would written Department authorization before construction create implementation problems?
- Should the rule include timing expectations or process steps for Department review?

2. Inspections, compliance reviews, and public requests

Primary rule sections: OAR 345-026-0050

What the draft does

- Updates inspection authority to cover construction, operation, and retirement, including materials, activities, related or supporting facilities, premises, and records reasonably related to determining compliance.
- Reframes public “requests for inspection” as broader “requests for compliance review.”
- Requires requests to identify the allegedly unmet site certificate condition or requirement, supporting facts, and whether the request includes a request for site inspection.
- Allows the Department to reject improperly submitted requests.
- Preserves Department forwarding of matters outside Council jurisdiction to the appropriate agency.

- Preserves Council review of Department determinations and the possibility of an informal conference.

Gap the draft is trying to fill

The existing rule allowed people to request an inspection, but it did not clearly distinguish between a general compliance review and a site inspection. The draft gives the Department more structure for receiving, screening, evaluating, and responding to requests.

Questions for RAC members

- Does the draft give the public enough information about how to submit a useful compliance-review request?
- Should the Department be required to help requestors cure incomplete requests before rejecting them?
- Is the scope of inspection authority appropriately tied to compliance?
- Is the Council review process clear and fair to requestors and certificate holders?

3. Corrective action plans and interim protective measures

Primary rule sections: OAR 345-026-0050(2)(j)

What the draft does

- Adds authority for the Department to require a corrective action plan after a compliance review if the Department identifies a potential site certificate compliance issue or a potential threat to public health and safety.
- Specifies what a corrective action plan must include: the issue, interim measures, known cause, corrective actions, schedule, and verification reporting.
- Allows the Department to require interim protective measures while the corrective action plan is being completed.
- Clarifies that using this tool does not limit formal enforcement authority under Division 29.

Gap the draft is trying to fill

The existing rules did not clearly describe what the Department could require between identifying a potential problem and deciding whether to pursue formal enforcement. The draft attempts to create a practical tool for resolving or managing issues before they worsen.

Questions for RAC members

- Are the triggers for requiring a corrective action plan clear enough?
- Should the rule distinguish between minor compliance concerns and urgent public health or safety concerns?
- Are the examples of interim protective measures appropriate?
- Should the rule require written findings, deadlines, or an opportunity for the certificate holder to respond?

4. Reporting requirements during construction and operation (Rewritten Rule)

Primary rule sections: OAR 345-026-0080

What the draft does

- Reorganizes the reporting rule into separate sections for construction compliance reports, final construction compliance and facility design reports, annual reports, annual report contents, use of other reports, form and manner of submittals, and Department review.
- Changes construction reporting from a progress-focused report to a compliance-focused report that must describe construction progress and provide documentation and evidence demonstrating compliance with applicable site certificate terms and conditions.
- Allows certificate holders to avoid duplicating information previously submitted if the report identifies the prior submission and explains why it remains current and applicable.
- Adds a final construction compliance and facility design report before operation, including maps and geospatial data for the site boundary and significant facility components.
- Clarifies annual reporting categories, including financial assurance, compliance with site certificate conditions, implementation of monitoring and mitigation plans, and facility modifications made without amendment.
- Allows the Department to require additional information, revised information, or information in a different format if a report is incomplete, unclear, inconsistent, or insufficient to demonstrate compliance.

Gap the draft is trying to fill

The existing reporting rule required construction progress reports and annual reports, but it did not provide enough direction about final design information, geospatial data, how reports should demonstrate compliance, how prior submissions may be reused, or how the Department should respond to incomplete or unclear reports.

Questions for RAC members

- Are the construction and annual reporting requirements clear and proportionate?
- Is the March 15 annual reporting deadline realistic?
- Are the final facility design report and geospatial data requirements specific enough?
- Does the no-duplication language adequately reduce burden?
- Should the rule retain any existing annual report categories that are reduced or removed in the draft?

5. Administrative update of the facility description (NEW RULE)

Primary rule sections: OAR 345-026-0088

What the draft does

- Creates a new process for updating the site certificate after the Department receives a final facility design report or determines that a facility change does not require an amendment.
- Allows the Department to update the site certificate to accurately describe the facility as constructed or operated.
- Allows revision or removal of certain site certificate conditions as needed to reflect the facility as built and to facilitate future inspections.
- Before the construction deadline expires, condition revision or removal may occur only at the certificate holder's request. After the construction deadline expires, the Department may initiate revision or removal on its own initiative.

- Requires Department presentation of the updated site certificate to the Council for approval, modification, or rejection.
- Clarifies that an administrative update does not authorize construction or operation of anything not previously approved by the Council.

Gap the draft is trying to fill

Site certificates often describe a facility as approved, but not necessarily as ultimately built. Existing rules did not provide a clear way to clean up the facility description after construction, remove unbuilt components after construction deadlines pass, or align conditions with what was actually constructed without requiring a full amendment process.

Questions for RAC members

- Is the distinction between an administrative update and an amendment clear enough?
- Should some administrative updates require notice to interested persons, agencies, or local governments?
- Does the rule adequately prevent substantive changes from being made through an administrative update?
- How should the rule address unbuilt components, unused corridors, or conditions tied only to facilities that were never built?

6. Correspondence and reports involving other agencies

Primary rule sections: OAR 345-026-0105

What the draft does

- Clarifies that the certificate holder and Department must exchange correspondence, summaries, reports, and excerpts related to compliance with statutes, rules, or local ordinances administered by other agencies, when the Council relied on those requirements to determine compliance.
- Clarifies how a certificate holder must request that information be withheld from public disclosure.
- Allows abstracted reports, but requires full reports or correspondence at the Department's request.

Gap the draft is trying to fill

The existing rule addressed exchange of correspondence but was less clear about reports, excerpts, summaries, and the process for information claimed to be exempt from disclosure. The draft attempts to clarify what information must be exchanged and how confidentiality concerns should be raised.

Questions for RAC members

- Is the scope of required correspondence and report exchange clear?
- Should full reports be required more often, or only on request?
- Would certificate holders know which outside-agency requirements the Council relied on?

7. Incident notification

Primary rule sections: OAR 345-026-0170

What the draft does

- Expands the incident-notification rule beyond interference with operation, significant natural or human-caused events, and fatalities.
- Adds events that could affect public health, safety, the environment, or compliance with the site certificate.
- Adds mechanical failures that could affect public health, safety, or the environment or result in a violation of a site certificate condition.
- Adds minimum content for the initial 72-hour notice.
- Clarifies that if an incident or pattern of incidents may constitute or result in a violation, the responsible party must also comply with Division 29 reporting requirements.

Gap the draft is trying to fill

The existing incident rule was brief and did not clearly identify what information the initial notice must contain or how incident notice relates to possible violation reporting. The draft attempts to ensure the Department receives timely, useful information when significant events occur.

Questions for RAC members

- Are the incident categories clear enough to apply in the field?
- Should the rule include examples or thresholds for mechanical failures?
- Is the initial notice content sufficient?
- Does the relationship between incident notice and violation reporting need more explanation?

8. Pre-enforcement notice for siting violations (NEW RULE)

Primary rule sections: OAR 345-029-0015

What the draft does

- Creates an optional pre-enforcement notice process before a notice of violation.
- Identifies factors the Department or Council must consider when deciding whether a pre-enforcement notice is appropriate.
- Requires the pre-enforcement notice to identify the potentially violated requirement, relevant facts, additional information needed, potential corrective action, response deadline, and opportunity to request an enforcement conference.
- Requires a written response from the responsible party.
- Allows the Department to amend or withdraw the pre-enforcement notice if information shows the violation did not occur.
- Clarifies that the Department is not required to issue a pre-enforcement notice before taking formal enforcement action.

Gap the draft is trying to fill

The existing enforcement rules move from potential violation reporting and inspection findings toward notice of violation and possible penalty, but they did not provide a clearly defined preliminary step for information exchange, corrective-action discussion, and possible resolution before formal enforcement.

Questions for RAC members

- Does the pre-enforcement process improve fairness and accuracy?
- Could it delay necessary enforcement?
- Are the factors for issuing a pre-enforcement notice appropriate?
- Should the rule include timelines for Department action after receiving a response?
- Should public notice or Council notice be required for some pre-enforcement matters?