

Agenda Item H

Amendment Processes Rulemaking

Energy Facility Siting Council
February 24, 2017

Jason Sierman
Energy Policy Analyst/Hearing Officer
Oregon Department of Energy

Agenda Item Segments

1. Staff Presentation
2. Public Hearing
3. Council Deliberation and Decision/Direction

Overview of Materials

Staff Report

1. **Atch. A: Crosswalk Document** (how existing Div. 27 relates to proposed Div. 27)
2. **Atch. B: Process Charts** (existing and proposed review processes)

Proposed Rules

3. **Atch. C: Div. 27 Clean** (easy to read version & indicates new numbering of existing rules)
4. **Atch. D: Div. 27 Redline** (amendment processes and gas storage testing pipelines)
5. **Atch. E: Div. 15 Redline** (contested case procedures)
6. **Atch. F: Div. 25 Redline** (certificate conditions)

Rulemaking Need

- EFSC's two core business processes
 1. Reviewing Original Site Certificates
 2. Reviewing Amendments to Site Certificates (\approx approx. 50% of workload)
- Council's **broad questions**:
 1. Can the review process be more **efficient**?
 2. Can **public involvement** be improved?

Rulemaking Need (Cont.)

More **specific questions:**

- What types of changes require an amendment?
- Different review processes for different types of changes?
- Should the Council have discretion to decide either of the above?
- Should there be a public hearing?
- Can the contested case process be improved?
- Should the length and limit of construction deadline extensions be changed?

2 Existing Amendment Processes

1. Standard process, applies to:

- Extending construction deadlines
- Design, construct or operate a facility differently than described in the site certificate if any of **“the 3 coulds”** apply
 1. Could result in a significant adverse impact (to a resource protected by Council standards) that has not been addressed in an earlier order.
 2. Could impair the CH’s ability to comply w/ a condition
 3. Could require a new condition or a change to a condition
- Later-adopted laws

Timing:

- Extended Review (180 days from RFA to PO + 30 days for comments & requests for CC)
- Regular Review (60 days from RFA to PO + 30 days for comments & requests for CC)
- Expedited Process (60 days from RFA to PO + 15 days for comments & requests for CC)

2. Transfer process

2 Proposed Amendment Processes

1. New standard process for:

- Extending construction deadlines
- Design, construct or operate a facility differently than described in the site certificate if any of **“the 3 coulds”** apply
- **Adding area to site boundaries**
- Later-adopted laws

2. Transfer process

- Same process as existing rules
- Language changes only

Changes Requiring RFA's

OAR 345-027-0050, page 6-7 of crosswalk dated 1-20-17

Key Change	Rationale
<p>Adds:</p> <ul style="list-style-type: none">Provision specifying the 5 types of changes that require RFAs.	<p>Clarity:</p> <ul style="list-style-type: none">Clarifies past confusion over what types of changes constitute an amendment.
<p>Adds:</p> <ul style="list-style-type: none">Provision specifying that a change proposing to “Add area to the site boundary” requires an amendment. <i>(previously triggered by “3 could’s” only)</i>	<p>Clarity:</p> <ul style="list-style-type: none">Very high likelihood that any addition of area to the site boundary will trigger the 1st of “the 3 could’s”: <i>1. Could result in a significant adverse impact (to a resource protected by Council standards) that has not been addressed in an earlier order.</i>
<p>Adds:</p> <p>Add'l mandatory step to RFAs that add area:</p> <ul style="list-style-type: none">CH req'd to go through a Pre-Amendment Conference (PAC) w/ Dept.	<p>Effectiveness:</p> <ul style="list-style-type: none">B/c adding area affects how analysis area distances are established, a PAC can help CH submit a complete RFA.Compared to other types of changes, adding area has inherent likelihood of affecting new property owners.

Pre-Amendment Conference (PAC)

OAR 345-027-0059, page 13 of crosswalk date 1-20-17

Key Change	Rationale
<p>New Step:</p> <ul style="list-style-type: none">Formally institutes the opportunity for a conference b/w CH and Dept. before CH submits RFA.	<p>Clarity:</p> <ul style="list-style-type: none">Explicit opportunity for the CH to meet and converse w/ the Dept. about whether an amendment is required.Dept. can clarify the review process, andDept. can clarify what info must be submitted.
<p>Optional:</p> <ul style="list-style-type: none">For any proposed changes other than adding area to the site boundary.	<p>Effectiveness:</p> <ul style="list-style-type: none">Dept. sees how a PAC could be beneficial for all types of proposed changes that may require an amendment.
<p>Required:</p> <ul style="list-style-type: none">For proposals to add area to the site boundary.	<p>Effectiveness:</p> <ul style="list-style-type: none">Adding area is likely to require re-defining the “study area” / “analysis area”Inherent likelihood that an addition of area could affect neighboring property owners.

DPO for the RFA

OAR 345-027-0065, page 17-18 of crosswalk dated 1-20-17

Key Change	Rationale
<p>New Step:</p> <ul style="list-style-type: none">Require the Dept. issue a Draft Proposed Order (DPO).	<p>Meaningful participation:</p> <ul style="list-style-type: none">Compared to taking comments on an RFA itself (w/o any Dept. analysis), taking comments on a DPO gives the public more information to comment on.Compared to taking comments on a PO, taking comments on a DPO allows staff to more efficiently incorporate comments into a PO.
<p>Timing: Same time to issue DPO in proposed process as to issue PO in existing process.</p> <ul style="list-style-type: none">Existing time to issue PO = 180 days after notice of RFA requiring extended review.Under existing process, nearly all RFAs have required extended review.New time to issue DPO = 120 days from Determination of Completeness (DOC).New DOC phase = 60 days; Dept. given up to 60 days to determine if a pRFA is a complete RFA.(120 days) + (60 days) = (180 days).	

Public Comment and Hearing on DPO

OAR 345-027-0067, page 19 of crosswalk dated 1-20-17

Key Change	Rationale
<p>New Steps:</p> <ul style="list-style-type: none">• Requires a mandatory public hearing:<ul style="list-style-type: none">• Hearing shall be conducted by the Council, and• Hearing must be held at least 20 days after the DPO is issued.• Requires Council meeting for Council to review all comments and to provide direction to staff.	<p>Meaningful participation:</p> <ul style="list-style-type: none">• Mandatory hearing increases opportunity for public to participate and allows them an opportunity to present their comments directly to the Council. <p>Efficiency:</p> <ul style="list-style-type: none">• Hearing held w/in a 30-60 day comment period yields no appreciable increase in time of comment period.

PO and Requests for CC

OAR 345-027-0069, page 20-23 of crosswalk dated 1-20-17

Key Change	Rationale
<p>Removes:</p> <ul style="list-style-type: none">• Second comment period.<ul style="list-style-type: none">• Existing process takes first round of public comment after RFA, second round after PO.• Proposed process takes a single round of comment during the DPO timeframe.	<p>Efficiency:</p> <ul style="list-style-type: none">• Receiving more meaningful comments on the DPO in writing and orally at the public hearing, precludes need for taking additional comments on the PO.
<p>Adds:</p> <ul style="list-style-type: none">• “Raise it or waive it” restriction that limits who can request a contested case (CC).<ul style="list-style-type: none">• Existing process allows any person to request a CC on any issue,• Proposed process only allows prior commenters to request CC, and• Prior commenters may only request CC on issues previously raised with sufficient specificity.	<p>Effectiveness:</p> <ul style="list-style-type: none">• Requires commenters to involve themselves early in the process, which leads to more effective participation. <p>Efficiency:</p> <ul style="list-style-type: none">• Early comments allow staff to address and resolve issues before CC requests.• Narrows issues involved in any CC request.

RFA to Extend Construction Deadlines

OAR 345-027-0085, page 4-5 of crosswalk dated 1-20-17

Key Change	Rationale
<p>Removes:</p> <ul style="list-style-type: none">Requirement to submit RFA no later than 6 mo. before existing deadline.	<p>Effectiveness:</p> <ul style="list-style-type: none">Existing 6 mo. req. was not accomplishing any observable purpose.
<p>Adds:</p> <ul style="list-style-type: none">Provision restricting Dept. from accepting RFAs any earlier than the date 12 mo. before existing deadline.	<p>Effectiveness:</p> <ul style="list-style-type: none">Existing rule did not prevent a CH from immediately applying for an extension.
<p>Removes:</p> <ul style="list-style-type: none">Council's discretion when approving extensions. Currently, <u>no more than a two year extension</u> and <u>no cap on # of extensions</u>. <p>Replaces with:</p> <ul style="list-style-type: none">No discretion in length of extensions:<ul style="list-style-type: none">Straight 3 yrs. from previous deadline; orIf a CC, 2 years from date Council grants extension.Cap of 2 extensions per facility or phase of a facility.	<p>Consistency and Certainty:</p> <ul style="list-style-type: none">Existing rule does not require:<ul style="list-style-type: none">Council to approve extensions of consistent duration, orCouncil to impose consistent limits on # of extensions granted.

Issues Raised

Issue	Potential Solution
Single review process for all types of proposed changes.	<ul style="list-style-type: none">• Secondary review process w/ less steps (2nd process):<ul style="list-style-type: none">➤ 2nd process is automatically applicable to specified types of proposed changes by rule; OR➤ Standard process is the default unless CH requests 2nd process, in which case it's Council's discretion to approve the request to apply the 2nd process.
Any addition of area to site boundary requires an amendment.	<ul style="list-style-type: none">• Option to request that an amendment is not necessary:<ul style="list-style-type: none">➤ Standard process is the default unless CH requests the add'n of area does not require an amendment, in which case it's Council's discretion to approve an add'n of area w/o amendment.

Council Options

After considering all comments, the Council may:

1. Make a final decision today - with or without directing changes,
2. Postpone a final decision – with or without directing changes, or
3. Cease all rulemaking activity.

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Amendment Processes Rulemaking

(Public Hearing)

February 24, 2017

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Energy Policy Analyst/Hearing Officer
Oregon Department of Energy

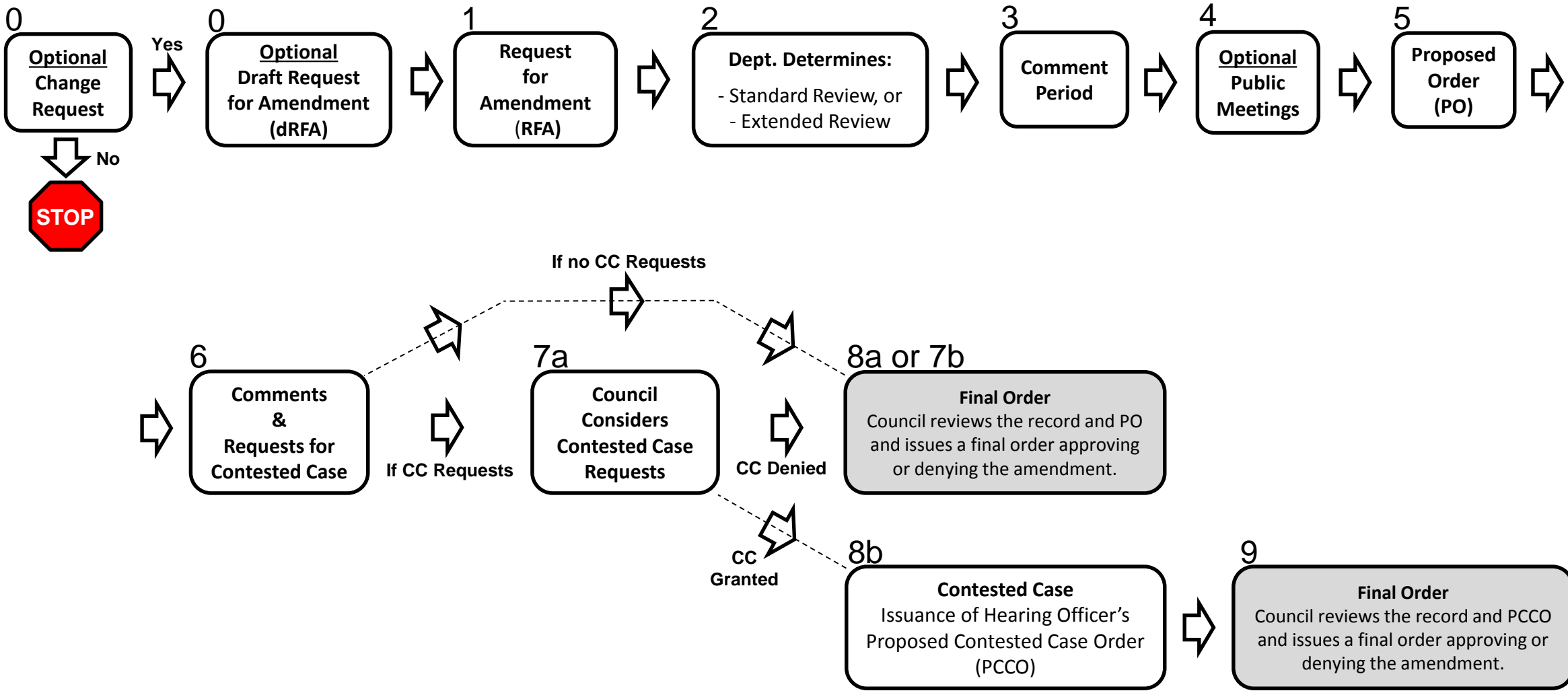
Rulemaking Hearing

- All commenters must provide:
 - Name
 - Address
 - Affiliation
- Commenters in the room must complete a GREEN form.
- Commenters on the phone must state this information orally for the record.
- The presiding officer or any member of the agency or Council may question any witness making a statement at the hearing. The presiding officer may permit other persons to question witnesses.
- There shall be no add'l statement given by any witness unless requested or permitted by the presiding officer.
- The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.
- ***See OAR 137-001-0030***

Existing Standard Process

Applicable to:

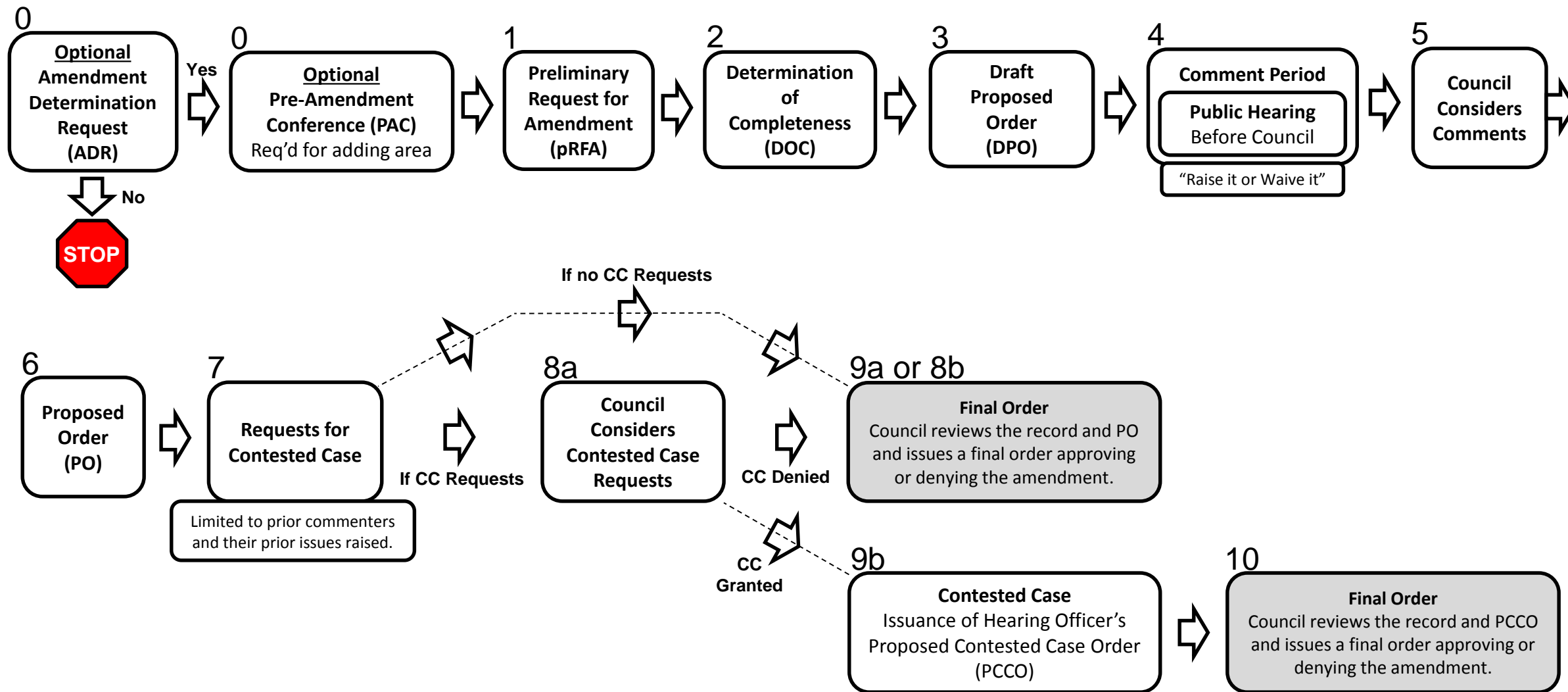
- Extending construction deadlines
- Design, construct or operate differently than site certificate if...
 - “the 3 could’s”
- Later-adopted laws



Proposed Rules – New Standard Process

Applicable to:

- Extending construction deadlines
- Design, construct or operate differently than site certificate if...
 - “the 3 could’s”
- Adding area to site boundary
- Later-adopted laws

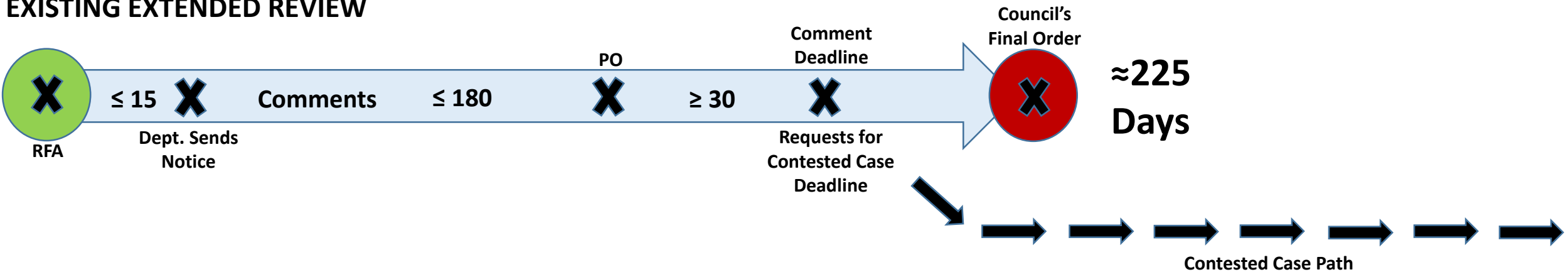


Timeline Comparison

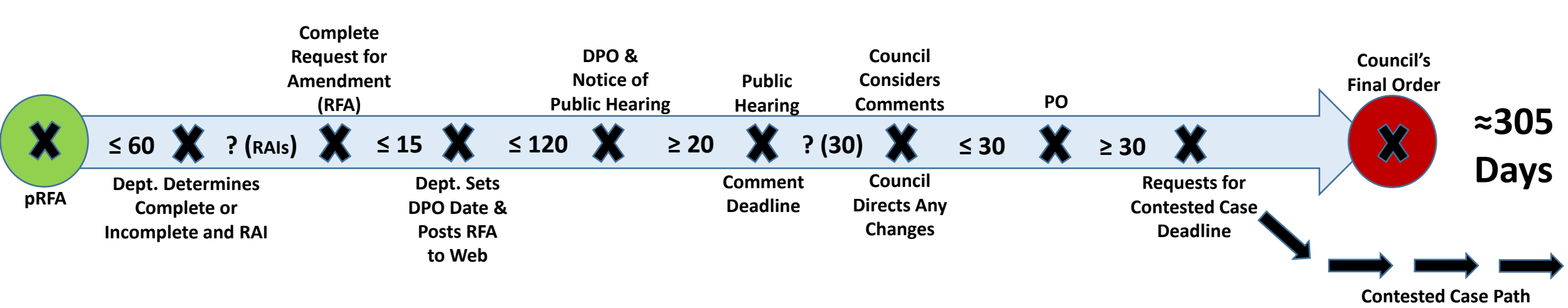
1st Required Submittal

Council's Final Determination

EXISTING EXTENDED REVIEW



PROPOSED STANDARD REVIEW PROCESS

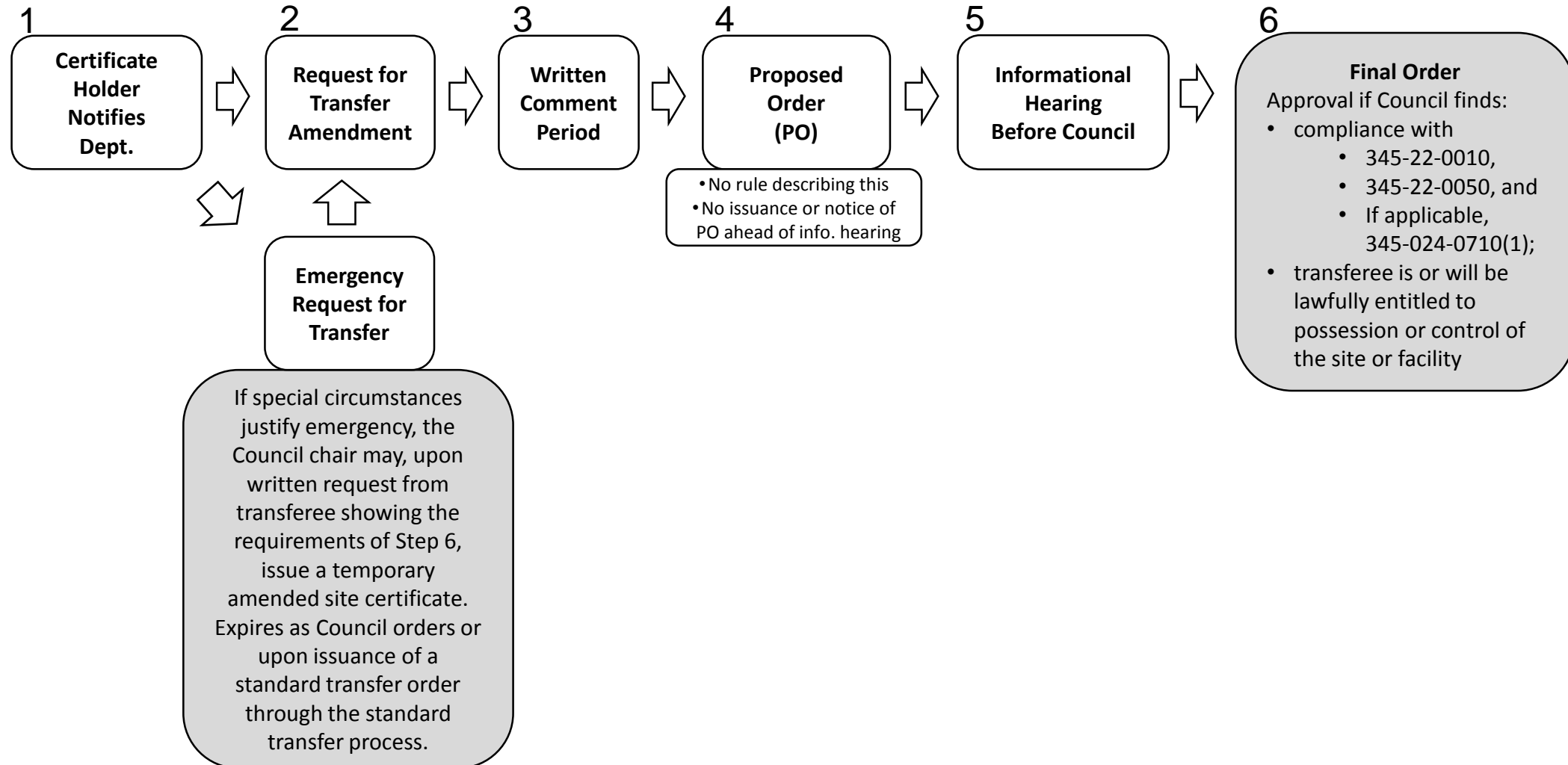


Existing Transfer Process

(No proposed process changes)

Applicable to:

- Transfer of ownership of the facility or the site certificate holder



Agenda Item H

Amendment Processes Rulemaking **(Deliberation and Decision)**

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Council Options

After considering all comments, the Council may:

1. Make a final decision today - with or without directing changes,
2. Postpone a final decision – with or without directing changes, or
3. Cease all rulemaking activity.

Options & Scheduling Scenarios

Final Decision Today

1. No Changes

- File rules with Secretary of State's Office
- Rules effective upon filing (unless Council directs otherwise)

2. Minor Changes (small amount of staff time)

- File rules with Secretary of State's Office
- Rules effective upon filing (unless Council directs otherwise)

3. Cease Rulemaking

Final Decision Postponed

1. Minor or No Changes (small amount of staff time)

- No add'l comments
- April EFSC meeting:
 - Council Deliberation and Decision

2. Minor or No Changes (small amount of staff time)

- Extend comment deadline
- April EFSC meeting:
 - Optional second hearing
 - Council Deliberation and Decision

3. Major Changes (large amount of staff time)

- Extend comment deadline
- May EFSC Meeting:
 - Optional second hearing
 - Council Deliberation and Decision