

Oregon EFSC Rulemaking - Chapter 345, Division 27
 (Revising the review processes for Amendments to Energy Facility Site Certificates)

Crosswalk – Comparing Existing Rules to Proposed Rules

The proposed rules reflect broad and wholesale changes to existing rules, and because nearly every Div. 27 rule has proposed changes, a typical “redline” document showing the proposed strikeout text and the proposed additional text may likely be uninterpretable and un navigable. This document shows the relationship between existing Div. 27 rules and the proposed Div. 27 rules. Existing rules are listed in the first column, with its corresponding proposed rule in the third column. All rows of rules marked **Amend** in the Proposed Action column indicate where there are changes in existing rule text or additional new language. All rows of rules marked **Adopt New** in the Proposed Action column indicate where there is a completely new rule with new language. All rows marked Split in the Proposed Action column indicate where an existing rule is proposed to be split into 2 or more proposed rules. All rows marked Renumber or Repeal in the Proposed Action column indicate a rule proposed to be renumbered or repealed, respectively. The Estimated Policy Impact column gives a rough indication of the policy implications of the proposed changes, where **Major** changes are estimated as more significant than Minor changes. The **rows shaded dark gray** function as visible breaks between one complete rule and the next complete rule.

List of Acronyms & Abbreviations:

ADR	Amendment Determination Request	DOC	Determination of Completeness	pRFA	Preliminary RFA
CC	Contested Case	DPO	Draft Proposed Order	RAC	Rulemaking Advisory Committee
CH	Certificate Holder	pASC	Preliminary App. for SC	RFA	Request for Amendment
Dept.	Department of Energy (Staff)	PO	Proposed Order	SC	Site Certificate

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0000 Certificate Expiration	Amend Renumber	345-027-0013		<p><u>Purpose</u> Rule stating that a site certificate expires if the Certificate Holder (CH) does not begin construction by the beginning date specified in the site certificate (SC).</p> <p><u>Summary of Proposed Change(s)</u> Move this rule so that it becomes the second rule in Division 27. The proposed language changes only improve the clarity of how the existing rule is phrased and does not change the substantive effect of the rule.</p> <p><u>Rationale</u> Reorganize the location of this rule. Proposed that the expiration rule move down to the second rule located within Division 27.</p>	Minor

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0011 Applicability	Amend	345-027-0011		<p><u>Purpose</u> Rule stating the rules in Division 27 do not apply to certain facilities and stating that rules defining the existing standard amendment review process, the existing transfer review process, and the existing later-adopted laws review process will remain applicable to all requests for amendment and change requests received by the Department (Dept.) prior to the effective date of any new rules - defining any new amendment review processes - that may be adopted by the Council as part of this rulemaking.</p> <p><u>Summary of Proposed Change(s)</u> Language change improves the clarity of the rule and adds an applicability timing provision that allows the existing amendment rules to apply to requests for amendment and change requests received by the Dept. before the effective date of any new rules that may be adopted by the Council as part of this rulemaking.</p> <p><u>Rationale</u> Reorganization for clarity. Logic suggests an applicability rule should be the first rule in any Division. Existing rule lacks clarity as to what rules apply to facilities. If new rules are adopted by Council, it would be fair that the existing rules would apply to requests for amendment that are received by the Dept. before the effective date of any new rules.</p>	Minor

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345-027-0020 Mandatory Conditions In Site Certificates	Renumber	345-025-0005		<p><u>Purpose</u> Rule stating the mandatory conditions that must be included in every site certificate.</p> <p><u>Summary of Proposed Change(s)</u> Reorganization only. Move the existing mandatory conditions rule to a newly created Division 25.</p> <p><u>Rationale</u> The Council must impose a set of mandatory conditions in every site certificate. Those mandatory conditions are currently provided in Division 27. However, the mandatory site certificate conditions have no substantive connection to the amendment review process. Instead the mandatory conditions are more closely related to the site certificate application review process and the Council standards. Therefore, staff believes that it would be more logical to place the mandatory conditions and the other condition related rules discussed below sequentially near the Council rules for its standards. Because the Councils rules for its standards are found in Div. 22, Div. 23, and Div. 24, staff recommends creating a new Div. 25 for the three rules relating to conditions.</p>	Minor
345-027-0023 Site Specific Conditions	Renumber	345-025-0010		<p><u>Purpose</u> Rule stating a list of site specific conditions the Council may include in approved site certificates for various types of energy facilities.</p> <p><u>Summary of Proposed Change(s)</u> Reorganization only. Move this rule to newly created Division 25.</p> <p><u>Rationale</u> Same as prior rationale.</p>	Minor
345-027-0028 Monitoring and Mitigation Conditions	Renumber	345-025-0015		<p><u>Purpose</u> Rule stating the site certificate must include conditions that address monitoring and mitigation to ensure compliance with Council standards.</p> <p><u>Summary of Proposed Change(s)</u> Reorganization only. Move this rule to newly created Division 25.</p> <p><u>Rationale</u> Same as prior rationale.</p>	Minor

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
<p>345-027-0030 Amendment to Extend Construct. Begin & Compl. Deadlines</p>	<p style="text-align: center;">Amend ReNUMBER</p>	<p>345-027-0085 Request for Amendment to Extend Construction Deadlines</p>		<p><u>Purpose of the rule</u> Rule stating the review process for amending site certificate deadlines for beginning and completing construction.</p> <p><u>Summary of Proposed Change(s)</u> Remove the requirement to submit a request for amendment (RFA) to extend construction deadlines no later than 6 months before the existing construction deadline and the corresponding good cause exception.</p> <p>Add a provision that restricts the Dept. from accepting RFAs for extending construction deadlines any earlier than the date 12 months before the applicable construction deadline.</p> <p>Remove Council discretion over setting new deadlines by requiring that any extension will be either 3 years from the previous deadline, or, in the instance of a contested case, 2 years from the date the Council grants the amendment.</p> <p>Add a provision that limits the Council to granting no more than two RFAs to extend construction deadlines for a facility or a phase of a facility.</p> <p><u>Rationale for Proposed Changes(s)</u> Removing the requirement that RFA's be submitted no later than 6 months before the existing construction deadline unless the certificate holder demonstrates good cause for the delay, removes a provision that has been the source of disagreement and has no corresponding standards or implementing rules. Under the existing rule, the CH is limited to a maximum two year extension from the previous deadline in effect. Therefore, under the existing rules, if a CH demonstrates good cause for not meeting the 6 month deadline, the Dept.'s review can take up some of the time of the maximum two year deadline extension the CH can receive. This has occasionally resulted in multiple requests for extension in relatively short succession.</p> <p>Under the existing rules, the Council must consider whether it has granted an extension of the deadlines in the past, but there is not a strict cap on the number of</p>	<p style="text-align: center;">Major</p>

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345-027-0030 Amendment to Extend Construct. Begin & Compl. Deadlines	Amend Renumber	345-027-0085 Request for Amendment to Extend Construction Deadlines		<p>extensions. The Proposed rule change would require the Council to grant a three year extension from the date of the previous deadline, or a two year extension from the date of the amended site certificate issuance in the instance of a contested case, thus providing more surety and clarity for a certificate holder. However, staff also recommends balancing the longer extension by capping the number of available extensions.</p> <p>Construction deadlines are important because the passage of time allows for changes in facts and law, which can cause the underlying rationale for approving a site certificate to become stale and outdated. Under the existing rule, a CH could, in theory, submit an RFA for a deadline extension immediately after the site certificate is approved and executed. Adding provision -0085(1) prevents the Dept. from accepting RFAs for extending construction deadlines earlier than 12 months before the prior deadline. This ensures that certificates for unbuilt facilities will, at a minimum, be reviewed no earlier than 2 years after execution and no later than the original construction deadlines.</p>	Major
		-0085	(1)	Directs CH to submit a pRFA in accordance with 345-027-0060 as early as twelve months prior to the applicable construction deadline.	
		-0085	(2)	Dept. receipt of a pRFA before the applicable deadline suspends expiration of SC.	
		-0085	(3)	Sets extensions of construction deadlines to either 3 years from the previous deadline, or, in the instance a review goes to contested case, 2 years from the date the Council grants the amendment.	
		-0085	(4)	Limits the number of construction deadline extensions Council may approve to 2.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0050 When an Amendment is Required	Split Amend	345-027-0050 Changes Requiring an Amendment		<p><u>Purpose</u> Rule stating the types of proposed changes to a facility, its owner, the owner of the site certificate holder, or the site certificate itself that require a Request for Amendment (RFA).</p> <p><u>Summary of Proposed Change(s)</u> In response to public input received by the Dept., staff recommends establishing a new rule that clearly lists all the different types of changes requiring an amendment to a site certificate. This is primarily a reorganization of the existing rule. The only substantive change would be to expressly identify a change that would add area to the site boundary as a change requiring a site certificate amendment.</p> <p><u>Rationale</u> The Dept. received input from the RAC indicating there may be confusion on what types of changes to a site certificate require a request for amendment. Listing the types of changes that require an amendment under one distinct rule makes it easier for the reader to understand the instances a site certificate holder must submit a request for amendment (RFA). The substance of the rules that specify what types of facility changes require an amendment would remain substantively similar to the existing rules.</p> <p>However, the recommend rules would expressly identify a change that would add area to the site boundary as a change requiring an amendment. Adding area impacts how the Dept. establishes the analysis area distances used in the Dept.'s review. Adding area also requires the Council to consider, for the area added, whether the potential impacts caused by the facility would comply with all Council standards. Finally, compared to other types of proposed changes, adding area is more likely to impact new property owners. For these reasons, staff also recommends adding a mandatory Pre-Amendment Conference (PAC) step in the review process for changes proposing to add area to a site boundary.</p>	Minor
		-0050	(1)	Transfers in ownership of the facility or ownership of the certificate holder require an amendment.	
		-0050	(2)	Application of later-adopted laws require an amendment.	

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345-027-0050 When an Amendment is Required	Split Amend	-0050	(3)	<p>Extensions of construction deadlines require an amendment.</p> <p>Staff recommends that extensions of the construction deadlines in a site certificate should require a Draft Proposed Order (DPO), comments on the DPO and a public hearing, a PO, and an opportunity for contested case requests on the PO. This is a similar review process to how Council reviews original site certificate applications. This review process is referred to as the standard, “one-size-fits-most” review process.</p>	Minor
		-0050	(4)	<p>Adding area to a site boundary requires an amendment. This is a change from existing rules that do not automatically require an amendment for a site boundary expansion.</p> <p>Staff recommends: adding area to site boundaries should require a Pre-Amendment Conference (PAC), a Draft Proposed Order (DPO), a comment period on the DPO that includes a mandatory public hearing, a PO, and an opportunity for contested case requests on the PO.</p>	
		-0050	(5)	<p>As is the case under the existing rules, an amendment is required if any of “the 3 could” apply to the proposed change.</p> <p>Changes to the design, construction or operation of a facility that:</p> <ol style="list-style-type: none"> 1) could have a significant adverse impact on a resource or interest protected by a Council standard; 2) could impair the CH’s ability to comply with a site certificate condition; or 3) could require a new condition or a change to a condition. <p>The rules have a standard, “one-size-fits-most” review process in addition to the transfer review process. Staff recommends that changes described in -0050(5) require a review process including a Draft Proposed Order (DPO), a comment period on the DPO that includes a mandatory public hearing, a PO, and an opportunity for contested case requests on the PO. The transfer review process would remain a stand-alone review process as it is under the existing rules.</p>	

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n/a	Adopt New	345-027-0051 Review Processes for Requests for Amendment		<p><u>Purpose</u> The purpose of this new rule is to state which type of process the Dept. shall use for its review of each type of proposed change.</p> <p><u>Summary of Proposed Change(s)</u> Staff recommends the Council apply the transfer review process to transfers of ownership of the facility or ownership of the site certificate holder, and a standard, “one-size-fits-most” review process to all other types of proposed changes.</p> <p><u>Rationale</u> Staff recommends this rule to clearly indicate the types of review processes that are applicable to the various types of proposed changes. -0051 describes two review processes: a standard process and a transfer process.</p>	Minor
		-0051	(1)	States that RFA’s to transfer a site certificate are reviewed through the transfer review process described in 345-027-0100. This is consistent with how existing rules function.	
		-0051	(2)	States that RFA’s proposing a change described in -0050(2), (3), (4) and (5) are reviewed through a standard review process. The standard review process consists of rules 345-027-0059, -0060, -0063, -0065, -0067, -0069 and -0071. The standard review process would require a Preliminary Request for Amendment (pRFA), Determination of Completeness (DOC) [where an RFA to apply later adopted law would be considered complete as described in -0090(4)], a Draft Proposed Order (DPO), comments on the DPO and a public hearing, a PO, and an opportunity for contested case (CC) requests on the PO. The Pre-Amendment Conference (PAC) would only be required for an RFA proposing to add area to the site boundary.	
		-0051	(3)	States the Council may act concurrently on any combination of different types of proposed changes submitted in a single request for amendment. If acting on multiple proposed changes in a single RFA, the Dept. will review all proposed changes through the highest review process type applicable to any one of the proposed changes.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact		
345-027-0050 When an Amendment is Required	Split Amend	345-027-0053 Changes Exempt from Requiring an Amendment		<p><u>Purpose</u> Rule stating the types of proposed changes to a facility that do not require a Request for Amendment (RFA), so long as the change also results in substantial compliance with the terms and conditions of the site certificate.</p> <p><u>Summary of Proposed Change(s)</u> Reorganization. Existing rule 345-027-0050 lists exemptions under two different sections, (2) and (6), and also includes other provisions such as the existing change request review process and the CH’s requirement to make written determinations when they believe amendments are not required. New rule -0053 would be strictly devoted to listing the exemptions from the requirement to submit an RFA found in existing 0050(2) and -0050(6). Staff relies on the majority of the language used in existing rule 345-027-0050, sections (2) and (6), in recommending this new rule -0053.</p> <p>Separating the transmission line and pipeline components of -0050(2)(d) into two separate sections.</p> <p><u>Rationale</u> Staff recommends creating this new rule to clearly list certain types of changes that, but for being exempt by way of this rule, would require an amendment under 345-027-0050, to make it easier to find all the instances of when a site certificate holder, who otherwise would have to request an amendment, is not required to do so.</p> <p>Separating the transmission and pipeline components of -0050(2)(d) is helpful because related or supporting pipelines carry gaseous and liquid forms of hydrocarbon either to or from and energy facility depending on the type of facility. In contrast, related or supporting transmission lines generally carry electrons from a generation facility to the grid. Because of the different functions of the transmission lines and pipelines the staff recommends creating separate exemptions.</p>	Minor		
				-0053		(1)	Language from 345-027-0050(2)(a) without any changes.
				-0053		(2)	Language from 345-027-0050(2)(b) without any changes.
				-0053		(3)	Language from 345-027-0050(2)(c) without any changes.

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345-027-0050 When an Amendment is Required	Split Amend	-0053	(4)	Language from 345-027-0050(2)(d) - Pipeline language separated into its own subsection.	Minor
		-0053	(5)	Language from 345-027-0050(2)(d) - Transmission line language separated into its own subsection.	
		-0053	(6)	Language from 345-027-0050(6) – This exemption is in existing section (6), which is a separate and isolated section from the other exemptions under section (2). Staff recommends combining it with the other exemptions so that all exemptions are included in a single rule.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0050 When an Amendment is Required	Split Amend	345-027-0055 Written Evaluations for Changes Not Requiring Amendment		<p><u>Purpose</u> Rule requiring the CH to complete written evaluations and keep written records of certain changes implemented without an amendment to its site certificate.</p> <p><u>Summary of Proposed Change(s)</u> Minor changes. Otherwise intended to be the functional equivalent of existing rules 345-027-0050(3) and (4) which require the CH to complete written evaluations and keep written records of certain changes implemented without an amendment to its site certificate.</p> <p><u>Rationale</u> The existing written evaluation language could create confusion about what type of proposed change to a facility triggers a requirement for an investigation and written evaluation. The proposed revisions are intended to clarify when a written evaluation is required.</p>	Minor
		-0055	(1)	Language similar to 345-027-0050(3) – Provides the CH must complete a written evaluation if a proposed change involves a change to an element of the facility that is generally included in and governed by the site certificate, even if the CH concludes the change would not require an amendment under 345-027-0050.	
		-0055	(2)	Combination of the language and purpose found in 345-027-0050(3) and (4).	
		-0055	(3)	Combination of the language and purpose found in 345-027-0050(3) and (4).	
		-0055	(4)	New rule provision to remind the CH that the Dept. may take enforcement actions if changes requiring an amendment are implemented without an amendment. While this authority is not stated explicitly under rule existing -0050, existing rule 345-029-0000 already gives Council this enforcement authority.	

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345-027-0050 When an Amendment is Required	Split Amend	345-027-0057 Amendment Determination Request (ADR)		<p><u>Purpose</u> Rule allowing the CH to request a written determination from the Dept. as to whether or not an amendment is required for any change proposed by the CH.</p> <p><u>Summary of Proposed Change(s)</u> Minor changes. Otherwise intended to be the functional equivalent to the existing “change request” review process in 345-027-0050(5), with limited modifications.</p> <p><u>Rationale</u> Similar to the rationale for prior recommendations, staff recommends a stand-alone rule to describe the existing change request provision -0050(5). Proposed changes to language and the organizational structure are to provide clarity.</p>	Minor
		-0057	(1)	Very similar to language in existing 345-027-0050(5). Explains what a CH must submit to the Dept. in its Amendment Determination Request (ADR).	
		-0057	(2)	Very similar to language in existing 345-027-0050(5). Explains that in response to an ADR, the Dept. must issue a written determination as promptly as possible or refer the ADR to the Council.	
		-0057	(3)	Same language as in existing 345-027-0050(5). Allows the CH to request that the Dept.’s determination be referred to the Council for concurrence, modification, or rejection.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
n/a	Adopt New	345-027-0059 Pre-Amendment Conference (PAC)		<p><u>Purpose</u> Rule formally instituting the ability for the CH to conference with the Dept. regarding the proposed changes before submitting its RFA.</p> <p><u>Summary of Proposed Change(s)</u> Staff recommends the CH participate in a mandatory Pre-Amendment Conference (PAC) with the Dept. for proposed changes that add area to the site boundary. For all other proposed changes, the PAC is optional.</p> <p><u>Rationale</u> One reason staff recommends creating this new rule is that it would give the CH an explicit opportunity to meet and converse with the Dept. about whether an amendment is necessary for their proposed change(s), and if an amendment is necessary, to understand the amendment review process and what information must be submitted to the Dept. for its review.</p> <p>Staff recommends a mandatory PAC for proposed changes that add area to the site boundary because the additional area will likely impact how the Dept. establishes the appropriate analysis area distances it will use in its review. Without knowing the appropriate analysis area distances, the CH may not provide the Dept. with all the information necessary for its review. Also, compared to other types of proposed changes, adding area to the site boundary increases the likelihood that new neighboring property owners could be affected by the impacts of the proposed change.</p>	Minor
			-0059 (1)	States when the PAC is optional and when it's mandatory.	
			-0059 (2)	Request for a PAC must be in writing and must describe the proposed change.	
			-0059 (3)	Upon receipt of a request, Dept. must schedule the PAC as promptly as possible.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0060 Request to Amend Certificate	Amend	345-027-0060 Preliminary Request for Amendment (pRFA)		<p><u>Purpose</u> Rule requiring the CH to submit a Preliminary Request for Amendment (pRFA), which is intended to closely resemble the Preliminary Application for a Site Certificate (pASC).</p> <p><u>Summary of Proposed Change(s)</u> Staff recommends a new pRFA step to the amendment review process, and recommends the new pRFA be modeled after the pASC requirement of the site certificate application review process.</p> <p><u>Rationale</u> The pRFA is intended to replace the existing rule allowing the CH to submit a draft request under existing rule 345-027-0060(3). Staff suggests that a pRFA step combined with a Determination of Completeness (DOC) step, discussed in detail below, will improve the review process by creating increased certainty for both the certificate holder and the Dept. about the procedural steps to follow when a pRFA is missing information. The ultimate goal is to have a clear review process for getting the Dept. all the information necessary for its review, at the earliest possible stage of the review process. Early and complete information to the Dept. improves the efficiency of the review process.</p>	Minor
		-0060	(1)	Describes what must be included in a pRFA.	
		-0060	(2)	Sets the analysis area distances as the larger of either the distances of the study area(s) defined in 345-001-0000(59) or distances of the analysis area(s) set in the project order for the application for a site certificate.	
		-0060	(3)	Allows CH to incorporate information by referencing previously submitted evidence.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	345-027-0063 Determination of Completeness (DOC) for a Request for Amendment		<p><u>Purpose</u> Rule stating a pRFA is not a complete RFA until the Dept. concludes it is complete and establishing a review process for when additional information is needed.</p> <p><u>Summary of Proposed Change(s)</u> Staff recommends a new Determination of Completeness (DOC) step be added to the amendment review process, and recommends the new DOC step on a pRFA be modeled after the existing DOC step on a pASC in the site certificate application review process. The combination of the pRFA and the DOC steps is intended to enhance a CH’s certainty that they have provided the Dept. with all the required information for their amendment request early in the review process. Identifying the need for additional information early in the review process improves the efficiency of the review and decision process. Similar to the pASC and DOC steps of the application review process, the Proposed pRFA and DOC steps of the amendment review process would formalize the step in the review process where the Dept. must review a request to determine if the certificate holder has included all necessary information in the pRFA. If the Dept. finds that the pRFA is incomplete, the recommend rule includes a Request for Additional Information (RAIs) review process that creates certainty for how additional information is requested and provided and the associated timing. While the Dept. currently reviews amendment requests for completeness and often requests additional information from certificate holders, the existing amendment review process currently lacks rules needed to create certainty for both the Dept. and the certificate holder.</p> <p>Staff’s goal in instituting a 60 day DOC step on the front end of the review process is for it to enable the Dept. to complete its review and issue a DPO within a maximum of 120 days from the date a pRFA is determined a complete RFA.</p> <p>Under the existing amendment review process, the Dept. spends time determining whether an RFA is complete when determining whether the RFA will require extended review. If the RFA is missing information, the RFA goes through an extended review limited to 180 days. 60 days of DOC and 120 days of review, yields the same 180 days currently allotted to the Dept. in its extended review of RFAs under 345-027-0070(1).</p>	Minor

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345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	345-027-0063 Determination of Completeness (DOC) for a Request for Amendment		<p><u>Rationale</u> Staff recommends modeling this new rule after the similar rule applicable to the review process for original applications for site certificates (<i>see 345-015-0190 for comparison</i>). For the same reasons indicated in the rationale supporting the pRFA step, the DOC step is likely to support a more efficient overall amendment review process and a consistent review process between original site certificate applications and amendments.</p>	Minor
		-0063	(1)	<p>States an RFA is a pRFA until the Dept. determines it is complete and states the Dept. may seek comments from reviewing agencies to determine completeness.</p> <p>The Dept.'s discretion in what agencies it sends the pRFA to differs from existing rule. Under 345-027-0070(1)(a), the Dept. is required to send an RFA to all reviewing agencies within 15 days of the Dept.'s receipt of an RFA.</p> <p>Staff recommends discretion over which agencies to send the pRFA to because compared to original applications for site certificate, the Dept. can receive a pRFA for a variety of changes with a wide range in magnitude of any potential impacts to the resources protected by the Council's rules and standards. Based on the variety of proposed changes and the magnitudes of those changes potential impacts, RFAs are more likely to not implicate every reviewing agency compared to original applications.</p>	
		-0063	(2)	Gives Dept. 60 days from receipt of pRFA to determine its completeness and states what the Dept. must include in its notice to the CH.	
		-0063	(3)	States that if Dept. does not issue a notice to CH within 60 days, the pRFA is considered a complete RFA.	
		-0063	(4)	States the Dept. may issue Requests for Additional Information (RAIs). The CH may request additional time. If the CH does not submit info by date specified in RAI, the Council may reject the pRFA.	
		-0063	(5)	States the pRFA is a complete RFA when Dept. finds there is enough info for the Council to make findings or impose conditions on all applicable laws and Council standards.	
		-0063	(6)	States that after completeness, the Dept. may require the CH to prepare a consolidated RFA that includes all revisions to the pRFA.	
		-0063	(7)	States that after determining completeness, the Dept. may still request additional info necessary for its review.	

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Crosswalk – Comparing Existing Rules to Proposed Rules

Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	345-027-0065 Draft Proposed Order for a Request for Amendment		<p><u>Purpose</u> Rule instituting a Draft Proposed Order (DPO) step and requiring the Dept. to notify the CH with a date of when it will issue a DPO for a complete RFA. Deadline for DPO issuance is no later than 120 days after the date of the notice.</p> <p><u>Summary of Proposed Change(s)</u> Staff recommends adding a new DPO step to the amendment review process and recommends the new DPO step be modeled after the DPO requirement of the site certificate application review process (<i>see 345-015-0210 for comparison</i>). The new review process being proposed would take one round of comments on the DPO. The existing review process takes two rounds of comments, one round of comments on the RFA and a second round of comments on the PO.</p> <p><u>Rationale</u> Issuing and taking comment on a DPO (opposed to taking comments on an RFA and a PO in the existing amendment review process) allows for more meaningful participation by the public. In the proposed review process, people will be commenting on a DPO containing the findings of fact and conclusions of law made by the Dept. Compared to the RFA, a DPO provides more information to people and allows them to provide comments regarding the Dept.'s findings of fact, conclusions of law and proposed recommendations to the Council. Compared to taking comment on the PO, taking comments on the DPO allows people to comment on the Dept.'s findings of fact, conclusions of law and proposed recommendation to the Council earlier in the review process. This gives the Dept. the opportunity to issue a PO that reflects any edits to the DPO findings of fact, conclusions of law and recommendations to the Council that the Dept. may choose to make in response to comments received on the DPO.</p> <p>Instituting a DPO phase also allows the Dept. to include a “raise it or waive it” feature that limits those who are eligible to request a contested case later in the review process, as is currently the case with the original site certificate review process. A person must have commented on the record of the DPO in order to be eligible to request a contested case on the subsequent proposed order. This is not the case with the existing amendment review process. The DPO and the “raise it or waive it” feature allow the amendment</p>	Major

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	345-027-0065 Draft Proposed Order for a Request for Amendment		review process to operate more efficiently and align with the original site certificate review process. Instituting a DPO and taking one round of comments on the DPO balances two opposing needs: what staff sees as a need to increase the opportunity for more meaningful public participation in the amendment review process, and what staff sees as a need to increase the efficiency of the amendment review process.	Major
		-0065	(1)	Within 15 days of determining an RFA is complete, Dept. must issue notice to CH. Notice must include a date, not more than 120 days from the date of notice, of when the Dept. will issue its DPO. Dept. also notifies public of its receipt of a complete RFA by posting an announcement to Dept. website.	
		-0065	(2)	No later than the date specified in the notice, the Dept. shall issue a DPO.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact	
345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	345-027-0067 Public Comment and Hearing on the Draft Proposed Order for a Request for Amendment		<p><u>Purpose</u> Institutes a mandatory public hearing on the Draft Proposed Order (DPO). This is intended to function similarly as to how the DPO hearing functions in the review process for an initial application for a site certificate (<i>see 345-015-0220 for comparison</i>).</p> <p><u>Summary of Proposed Change(s)</u> Staff recommends holding a mandatory public hearing as part of the proposed new review process.</p> <p><u>Rationale</u> The existing amendment review process rule 345-027-0070(3) already allows the Dept. to hold one or more public meetings during its review of an RFA. However, the public meeting is not mandatory and does not allow an opportunity for comment on a proposed order that includes the Dept.'s proposed findings of fact and conclusions of law. Staff sees value in the opportunity for the public to orally voice its comments on a DPO. Staff sees additional value in giving the public this opportunity to provide oral comments at a mandatory public hearing in front of the Council. This would also align the amendment review process with the original site certificate application review process.</p>	Major	
			-0067	(1)		States that the Council shall conduct a public hearing on the RFA.
			-0067	(2)		States that when the DPO is issued, the Dept. must send notice of the complete RFA, DPO and Public Hearing.
			-0067	(3)		Describes what must be in the Sec. (2) notice. Replicates existing OAR 345-015-0220(3).
			-0067	(4)		States that during the hearing, the Dept. shall explain the amendment review process and how the public may participate in the process. Replicates existing OAR 345-015-0220(4).
			-0067	(5)		States what the presiding officer of the public hearing must state at the commencement of the public hearing. Replicates OAR 345-015-0220(5).
			-0067	(6)		States that persons may comment at the hearing without administration of an oath and all comments are recorded and part of the decision record. Replicates OAR 345-015-0220(6).
			-0067	(7)		States that the Council must review the DPO, must consider all comments received on the DPO, and may provide comments to the Dept. regarding the DPO. (<i>see 345-015-0230 for comparison</i>).

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	345-027-0069 Proposed Order, Requests for Contested Case and Council’s Final Decision		<p><u>Rationale</u> Apart from the new “raise it or waive it” threshold applicable to CC requests (requiring a person to either raise an issue on the record of the public hearing, or waive their right to participate in any future CC proceedings), these rules are largely analogous to the existing rules found in OAR 345-027-0070(4) through (10).</p> <p>Implementing the “raise it or waive it” threshold to the CC request review process adds clarity and certainty to the evaluation the Council will perform when determining the issues and the participating parties in any contested case proceeding on an RFA. Without the “raise it or waive it” threshold, any person could request a contested case even if they did not participate in the hearing and provide the certificate holder and the Dept. an opportunity to consider and address the comment or concern. Adding “raise it or waive it” will again be consistent with the original site certificate review processes.</p> <p>The addition of a mandatory public hearing as part of the DPO comment period increases the opportunity for public participation in the review process by giving the public the opportunity, in most cases, to stand before the Council and voice their issues directly to Councilmembers.</p> <p>With the additional info, the additional opportunity for meaningful public input, and the addition of the opportunity to speak directly to Councilmembers about their issues, subsequently limiting the pool of people who may request to participate on a CC to those who commented on the record of the DPO aims to strike a balance between increased public participation and increased efficiency.</p>	Major
		-0069	(1)	States the Dept. must issue a PO no later than 30 days after the close of the record of the public hearing on the DPO and that the Dept. must consider all timely comments received, including any comments from the Council.	
		-0069	(2)	States the Dept. must issue notice of the PO and to whom notice must be sent.	
		-0069	(3)	States what must be included in the notice of the PO.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	-0069	(4)	States that on the same date the Dept. issues notice of the PO that the Dept. must issue notice of the opportunity to request a contested case to the certificate holder and all those who commented on the record of the DPO.	Major
		-0069	(5)	Institutes a “raise it or waive it” threshold requirement applicable to contested case requests. Only those persons who comment on the record of the public hearing may request a contested case proceeding, and the issues any party to a contested case may participate on are limited to those issues that party properly raised in its contested case request that the Council found sufficient to justify the contested case, except that the certificate holder may participate on any issue the Council found sufficient to justify a contested case proceeding. The analog of this language for the site certificate application review process is found in ORS 469.370(5) and 345-015-0016(3).	
		-0069	(6)	States that contested case requests must be submitted in writing and received by the Dept. within 30 days from the notice of the opportunity to request a contested case. Also states what must be included in a CC request which is a combination of information required by existing rules 345-027-0070(6) and 345-015-0016(5)(a) [which refers to the requirements of 137-003-0005(3)].	
		-0069	(7)	States that before considering whether issues raised in a contested case request justify a contested case proceeding, the Council must determine if issues were properly raised.	
		-0069	(7)(a)	States that properly raised issues are those that were raised on the record of the public hearing with sufficient specificity to afford the Council, the Dept. and the CH an adequate opportunity to respond.	
		-0069	(7)(b)	States that properly raised issues could be raised if the Dept. did not follow the requirements of 345-027-0067.	
		-0069	(7)(c)	States that properly raised issues could be raised if the action proposed in the PO differs materially from the action proposed in the DPO.	
		-0069	(8)	States that the Council must deny contested case requests from persons who did not comment on the record of the hearing or failed to properly raise an issue.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	-0069	(9)	<p>This section is intended to resemble the functionality of existing rule 345-027-0070(7). States that after identifying properly raised issues, the Council must determine whether any of those issues justify a contested case proceeding. Also states the test the Council applies for determining whether a contested case proceeding is justified: “the Council must find that the request raises a significant issue of fact or law that may affect the Council’s determination that the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24.” This is the same test the Council applies in the existing amendment review process, with language added to clarify that the laws and Council standards applicable to the Council’s review of an RFA are those found in Ch. 345, Div. 22, 23 and 24.</p> <p>The other language in existing section -0070(7), “If the Council finds the request would not affect the Council’s determination if the alleged facts were found to be true but that those facts could affect a site certificate condition, the Council may deny the request and may adopt appropriate conditions” effectively gives the same authority to the Council as that which is given under existing rule 345-070-0070(8)(b). Therefore, this authority and language from existing -0070(7) is proposed to be removed from rule and the authority and language of existing -0070(8)(b) is proposed to be retained and located in proposed section -0069(10)(b).</p>	Major
			(10)	States the actions the Council must take when determining if a properly raised issues justifies a contested case proceeding.	
		-0069	(10)(a)	<p>If Council finds the request identifies an issue that justifies a CC, the Council must conduct a contested case and the Council must identify the parties and the issues each party to the contested case may participate on.</p> <p>States that parties are limited to those who the Council found properly raised an issue in their CC request that the Council found sufficient to justify a CC, and that the CH is an automatic party to any CC.</p> <p>States the issues parties may participate on in the CC are limited to those issues that party properly raised in its CC request that the Council found sufficient to justify a CC, except the CH may participate on any issue the Council finds sufficient to justify a CC.</p>	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0070 Review of a Request for Amendment	Repeal & Adopt New	-0069	(10)(b)	If the Council finds a CC request identifies issues that an amendment to the PO would settle in a manner satisfactory to the Council, the Council may deny the CC request to those issues and direct the Dept. to amend and re-notice the PO. There is then a new opportunity for requests for contested case on the amended PO, where requests are limited to the PO changes.	Major
		-0069	(10)(c)	Same language as existing OAR 345-027-0070(8)(c): If the Council finds a CC request does not identify a properly raised issue that justifies a contested case proceeding, the Council shall deny the request. The Council shall then adopt, modify or reject the PO based on the considerations described in OAR 345-027-0071. In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council approves the amendment request, the Council shall issue an amended site certificate effective upon execution by the Chair and the CH.	
		-0069	(11)	States that if there is no request for a CC the Council may adopt, modify or reject the PO based on the considerations described in OAR 345-027-0071. Same language as existing OAR 345-027-0070(9).	
		-0069	(12)	States that judicial review of the Council’s final order shall be as provided by ORS 469.403.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact	
345-027-0070(10)	Adopt New	345-027-0071 Scope of Council's Review		<p><u>Purpose</u> Move the existing language of 345-027-0070(10) to become a stand-alone rule and make changes for clarity and consistency.</p> <p><u>Summary of Proposed Change(s)</u> The proposed changes do not substantially deviate from what is already required by rule OAR 345-027-0070(10). In the instances staff has proposed changes, the changes are for clarity and consistency.</p> <p><u>Rationale</u> The content of OAR 345-027-0070(10) is an important provision of the amendment review process. Therefore, staff sees value in moving the content of OAR 345-027-0070(10) into its own stand-alone rule to make it more visible and conspicuous.</p> <p>Staff recommends removal of the existing language under 345-027-0070(10)(b)(A) and (B) to comport with other changes staff is recommending under 345-027-0085.</p>	Minor	
			-0071	(1)		States the Council must apply the applicable laws and Council standards required under sections (2) and in effect on the dates described in section (3).
			-0071	(2)		States what laws and Council standards are applicable for 4 types of amendments:
			-0071	(2)(a)		For amendments proposing to add new area to the site boundary, the Council must find the portion of the facility within the area added to the site complies with all laws and Council standards applicable to an original site certificate.

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0070(10)	Adopt New	-0071	(2)(b)	For RFAs to extend construction deadlines, after considering any changes in facts or law since the date the current site certificate was executed, the Council must find the facility complies with all laws and Council standards applicable to an original site certificate application.	Minor
				There is also an exception for RFAs proposing to extend construction deadlines, where the Council need not find compliance with an applicable law or Council standard if the Council finds all of the following: the CH has spent more than 50% of budgeted costs; CH in ability to complete construction by the deadline was the result of unforeseen circumstances outside the CH’s control; the applicable law or standard if applied would result in an unreasonable financial burden on the CH; and the Council does not need to apply the standard to avoid significant threat to the public health, safety or environment. This language currently exists in rule and is not proposed to be changed.	
		-0071	(2)(c)	For any amendment not described above, the facility with the proposed changes, complies with the applicable laws or Council standards that could be implicated by the proposed changes.	
		-0071	(2)(d)	For all amendments, the amount of the bond of letter of credit is adequate.	
		-0071	(3)	States the effective date for those applicable laws and Council standards that the Council is to apply when making the findings necessary to grant an amendment.	
		-0071	(3)(a)	For the applicable substantive criteria of the Council’s land use standard, OAR 345-022-0030, the criteria in effect on the date the CH submitted the RFA.	
-0071	(3)(b)	For all other applicable laws and Council standards, the criteria in effect on the date the Council issues the amended site certificate.			

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0080 Review of a Request by a Certificate Holder for Expedited Amendment	Repeal	n/a	n/a	<p><u>Rational</u> Based on the infrequent use of the existing expedited amendment review process staff recommends this rule be repealed.</p>	Major

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
<p>345-027-0090 Request by Any Person for Amendment to Apply Subsequent Laws or Rules</p>	<p style="text-align: center;">Amend</p>	<p>345-027-0090 Request for Amendment by Any Person to Apply Later-Adopted Laws</p>		<p><u>Purpose</u> Purpose of the proposed changes is to provide clarity, certainty and consistency to the rules describing Council’s review of RFA’s to apply later-adopted laws that will prevent significant threats to the public health or safety or to the environment.</p> <p><u>Summary of Proposed Change(s)</u> While this rule has not been used, staff believes the proposed revisions are important.</p> <p>Section (1) language is proposed to clearly indicate early on in the rule that a precondition to Council approval of any RFA seeking to apply later-adopted laws is that failure to apply the law(s) results in a significant threat to the public health or safety or to the environment.</p> <p>Section (2) changes are proposed to reduce the verbiage necessary to state what must be submitted to the Dept. in an RFA under this rule.</p> <p>Section (3) combines the concepts in existing sections (3) and subsection (4)(a).</p> <p>Existing Section (4)(b) is proposed to be removed.</p> <p>Subsections (5)(a),(b), and (c) are being proposed to include the language of existing rule subsections (4)(c),(d), and (e).</p> <p>Section (4) is proposed so the Dept. can review an RFA under this rule through the review process described in section (5) that references rules -0065, -0067, -0069 and -0071.</p> <p><u>Rationale</u> Existing sections (1) and (2) were modified, respectively, for clarity and conciseness. Existing subsection (4)(b) was removed because the existing review process refers to the “extended” (not expedited, that is a typo) review process described in existing rule 345-027-0070(2). Not only is there no expedited review process, but the proposed rules eliminate the extended review process completely. Because the existing rules require an</p>	<p style="text-align: center;">Major</p>

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0090 Request by Any Person for Amendment to Apply Subsequent Laws or Rules	Amend	345-027-0090 Request for Amendment by Any Person to Apply Later-Adopted Laws		RFA for later-adopted laws to be reviewed according to existing rule 345-027-0070, and because -0065, -0067, -0069, and -0071 are proposed to replace existing -0070, proposed sections (4) and (5) are necessary to link the review process for an RFA to apply later-adopted laws to the review process described by rules -0065, -0067, -0069 and -0071.	Major
		-0090	(1)	Sets scope of the rule, which is to allow for any person to request an amendment to apply laws adopted after the date the site certificate was executed.	
		-0090	(2)	Described what must be submitted to the Dept. in a request for amendment to apply later-adopted laws.	
		-0090	(3)	Dept. must send a copy of any request under this rule to the CH and must give the CH a deadline to submit any response to the Dept. Responses must state whether the CH agrees that there is a clear showing of a significant threat to the public health, safety or the environment that requires application of the later-adopted law.	
		-0090	(4)	Explains when the Dept. considers a request under this rule complete for purposes of complying with OAR 345-027-0065.	
		-0090	(5)	Explains the Dept.'s review process for requests for amendment under this rule. Requests for contested case may come from anyone who commented on the record of the DPO. To order a contested case, the Council must find that an issue identified in a contested case request raises a significant issue of fact or law, except that if a CH requests a CC on a PO that recommends approval or modified approval of a request for amendment under this rule then the Council must conduct a CC limited to the issues stated by the CH. The purpose of this change is that in the context of an amendment to a site certificate for a later adopted law, the certificate holder would be uniquely affected and should have an opportunity, if requested, to address the proposed changes through a contested case proceeding.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0100 Transfer of a Site Certificate	Amend	Request for Amendment to Transfer Ownership, Possession or Control of the Facility or the Certificate Holder		<p><u>Purpose</u> Clarify points that were previously unclear and conform the transfer rules to the changes staff is recommending in its newly proposed rules.</p> <p><u>Summary of Proposed Change(s)</u> The Dept. is recommending changes to existing sections (1), (3), (7), and (12) of the existing rule. Changes to section (1) add clarity in defining what types of transactions require a transfer RFA. Changes to section (3) add language that clearly states that any transaction that would require the transfer of a site certificate does not terminate the transferor’s duties under the site certificate until a transfer RFA is approved by the Council. Changes to section (7) change the name of the “informational hearing” to a “transfer hearing.” Changes to section (12) update the references to the types of review processes used when transfer RFAs are submitted to the Council concurrently with other types of RFAs.</p> <p><u>Rationale</u> These are intended to be minor changes that clarify points that were previously unclear and conform the transfer rules to the other changes staff is recommending under other rules.</p>	Minor
			-0100 (1)	Defines when an RFA to transfer a site certificate is necessary – when there’s a change in the ownership, possession, or control of the facility, or the certificate holder. Also replaces the term “transferee” with “new owner” throughout the rule. Both these changes are commensurate with the mandatory condition language in existing OAR 345-027-0020(15). Both changes are intended to provide additional clarity on the type of ownership and organizational changes that trigger an amendment.	
			-0100 (2)	States that a CH must notify the Dept. when the CH has knowledge that a transaction requiring a transfer is or may be pending. Also described what must be in the notice.	
			-0100 (3)	States the a completed transaction that would require a transfer under this rule does not terminate the transferor’s duties and obligations under the site certificate until the Council approves a transfer and issues an amended site certificate.	
			-0100 (4)	States what the CH must submit to the Dept. in its RFA for a transfer.	
			-0100 (5)	States the Dept. may require the new owner to submit a written statement from the current CH verifying the new owner’s right to possession of control of the site or facility.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0100 Transfer of a Site Certificate	Amend	-0100	(6)	States the Dept. must issue notice of an RFA for a transfer within 15 days after receiving one, states who it must issue notice to, and states what must be included in the notice.	Minor
		-0100	(7)	States the Council must hold a transfer hearing during a Council meeting and provide notice of the hearing on the meeting agenda to be sent by mail or email to the Council’s general mailing list in advance of the meeting.	
		-0100	(8)	States the findings the Council must make to issue an order approving the RFA for a transfer.	
		-0100	(9)	States that except for what is described in section (12), the Council shall not otherwise change the terms and conditions of the site certificate in an order approving the transfer.	
		-0100	(10)	States the Council shall issue an amended site certificate naming the new owner as the new certificate holder or as the new owner of the certificate holder upon issuing an order approving the transfer.	
		-0100	(11)	States the Council may issue a temporary amended site certificate under special circumstances that justify an emergency.	

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Existing Rule	Proposed Action	Proposed Rule	Proposed Sections	Purpose, Summary and Rationale of Proposed Changes in Proposed Rules	Est. Policy Impact
345-027-0110 Termination of a Site Certificate	No Change	n/a	n/a	n/a	n/a
345-027-0210 General	No Change	n/a	n/a	n/a	n/a
345-027-0220 Request for Approval	No Change	n/a	n/a	n/a	n/a
345-027-0230 Review of a Request for Approval	No Change	n/a	n/a	n/a	n/a
345-027-0240 Conditions	No Change	n/a	n/a	n/a	n/a