

Process for Reviewing a Petition for Rulemaking

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DECISION PROCESS

The decision process has two steps:

1. The agency must decide whether to grant or deny the petition. If the agency denies the petition, it must do so in writing, within 90 days of receipt of the petition.
2. If the agency grants the petition and decides to commence rulemaking, the notice of proposed rulemaking must be filed with the Secretary of State within 90 days of receipt.

**THE COUNCIL WILL NEED TO TAKE ACTION ON THE PETITION
before
May 6, 2010**

FACTS

- On February 5, 2010, Oregon Natural Desert Association, Audubon Society of Portland and Defenders of Wildlife (ONDA) filed a joint petition for rulemaking with the Energy Facility Siting Council (Council) and the Oregon Department of Energy (ODOE).
- The petition requests that the Council amend OAR 345-001-0010 to add a definition of "Single energy facility."
- ONDA further petitioned the Council to amend OAR 345-021-0000 to add a requirement that any person seeking a conditional use permit for a renewable energy facility less than 35 MW provide information demonstrating to the Council that the proposed facility is not a "single energy facility" as defined by the proposed addition to the definition section of the rules.

PUBLIC COMMENT

ONDA's petition is a request to amend an existing rule pursuant to ORS 183.390(1). Therefore:

- The Council should invite public comment before deciding whether to grant or deny the petition. (ORS 183.390(2) & OAR 137-001-0070(3))
- Notice of this petition and the request for comments should be given to persons entitled to notice of a rulemaking under ORS 183.335(1).
- Notice should be given to persons identified by ONDA pursuant to OAR 137-001-0070(1) as "persons known to the petitioners to be interested in the rule."

GRANTING/DENYING PETITION

- ORS 183.390(3) sets out six criteria for an agency to consider when deciding to grant or deny a petition for rulemaking (see attached)
 - If the Council DENIES the petition, it should memorialize consideration of all of the six criteria in the written denial required by ORS 183.390(1)
 - NOTE: Denial of a petition for rulemaking does not preclude the Council from independently initiating rulemaking on the same subject at a later time.
 - If the Council GRANTS the petition and commences rulemaking, the proposed rule provides the starting point.

STATUTE

ORS 183.390 - Petitions requesting promulgation, amendment or adoption of rules

(1) An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. Not later than 90 days after the date of submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with ORS 183.335.

(2) If a petition requesting the amendment or repeal of a rule is submitted to an agency under this section, the agency shall invite public comment upon the rule, and shall specifically request public comment on whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses.

(ORS 183.390 continued)

(3) In reviewing a petition subject to subsection (2) of this section, the agency shall consider:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;

(e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and

(f) The statutory citation or legal basis for the rule.

ADMINISTRATIVE RULE

OAR 137-001-0070

Petition to Promulgate, Amend, or Repeal Rule

(OAR 137-001-0070 was adopted by the Attorney General as required by ORS 183.390. Agencies must apply this rule without further adoption or amendment.)

(1) An interested person may petition an agency to adopt, amend, or repeal a rule. The petition shall state the name and address of the petitioner and any other person known to the petitioner to be interested in the rule. The petition shall be legible, signed by or on behalf of the petitioner, and shall contain a detailed statement of:

- (a) The rule petitioner requests the agency to adopt, amend, or repeal. When a new rule is proposed, the petition shall set forth the proposed language in full. When an amendment of an existing rule is proposed, the rule shall be set forth in the petition in full with matter proposed to be deleted and proposed additions shown by a method that clearly indicates proposed deletions and additions;
- (b) Facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment, or repeal of the rule;
- (c) All propositions of law to be asserted by petitioner.

(OAR 137-001-0070 continued)

(2) If the petitioner requests the amendment or repeal of an existing rule, the petition must also contain comments on:

(a) Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses;

(b) The continued need for the existing rule;

(c) The complexity of the existing rule;

(d) The extent to which the existing rule overlaps, duplicates, or conflicts with other state or federal rules and with local government regulations; and

(e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.

(OAR 137-001-0070 continued)

(3) If a petition requests the amendment or repeal of a rule, before denying a petition, the agency must invite public comment upon the rule, including whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses.

(4) The agency:

(a) May provide a copy of the petition, together with a copy of the applicable rules of practice, to all persons named in the petition;

(b) May schedule oral presentations;

(c) Shall, in writing, within 90 days after receipt of the petition, either deny the petition or initiate rulemaking proceedings.