

ATTACHMENT 1

DRAFT

NOTICE OF PROPOSED RULEMAKING

CHAPTER 345

DEPARTMENT OF ENERGY, ENERGY FACILITY SITING COUNCIL

FILING CAPTION: Amending rule regarding exemption requirement for standby generators

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/29/2023 5:00 PM

NEED FOR THE RULE(S):

The legislature passed HB 2063 in 2021, adding the following language as ORS 449.320 4(a)(B), "The council may not require a person who operates or proposes to construct or enlarge an energy facility to request that the council determine whether the proposed facility qualifies for exemption under subsection (2)(g) of this section." This rule change reflects the new statutory language.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 449.320 4(a)(B)

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE:

There is no anticipated effect on racial equity in the state. This rule change just brings EFSC rules in alignment with existing law.

FISCAL AND ECONOMIC IMPACT:

There is no anticipated significant fiscal or economic impact from this rule change. This rule change just brings EFSC rules in alignment with existing law.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

There is no anticipated significant fiscal or economic impact to any small business from this rule change. This rule change just brings EFSC rules in alignment with existing law.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

They were not consulted.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?This rule change does not seek to do anything other than bring EFSC rules in compliance with recent legislation.

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AMEND: 345-015-0360

RULE TITLE: Contents of Request for Exemption

RULE SUMMARY: Bringing rule in alignment with legislation passed in 2021. See, HB2063 (2021).

RULE TEXT:

(1) Except as noted in (8), any person Any person wishing to construct and operate a facility exempt from Council jurisdiction shall submit a request for exemption to the Department of Energy before beginning construction. A person shall not construct or expand a facility as defined in OAR 345-001-0010 unless the Council has granted an exemption as described in 345-015-0370 or has issued a site certificate or an amendment to an existing site certificate.

(2) In a request for an exemption under OAR 345-015-0350(1)(a) for a modification of a facility for which no site certificate has been issued that will not increase the ability of the facility to use fuel for electricity production under peak steady state operating conditions to more than 200 million Btu per hour (higher heating value) greater than it was on August 2, 1993, the person shall provide the following information in support of the request:

- (a) A detailed description of the proposed upgrade or expansion;
- (b) The proposed and current facility fuel use;
- (c) The proposed and current nominal electric generating capacity;
- (d) The proposed and current related or supporting facilities and site boundary;
- (e) The proposed and current heat rate; and
- (f) Verification that the facility had operable electric generating equipment on August 2, 1993.

(3) In a request for an exemption under OAR 345-015-0350(1)(b) for modification of a facility for which no site certificate has been issued that is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon, the person shall provide the following information in support of the request:

- (a) The information described in subsections (2)(a) through (f) of this rule;
- (b) Identification and discussion of the portion of the short-term plan of action of an energy resource

plan that calls for the facility expansion; and

(c) The Public Utility Commission of Oregon Order acknowledging the plan described in subsection (b).

(4) In a request for an exemption under OAR 345-015-0350(2) for construction or expansion of an interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission, the person shall provide a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission for the proposed pipeline or associated underground natural gas storage facility, or other comparable evidence that the proposed pipeline or storage facility is within that agency's jurisdiction.

(5) In a request for an exemption based on a very efficient use of fuel (high efficiency cogeneration) under OAR 345-015-0350(3), the person shall provide the following information in support of the request:

(a) Detailed information on proposed fuel use, power plant design, steam or heat output to the thermal host and proposed electric output;

(b) Detailed information on the current facility, including fuel to be displaced, current steam or heat use and current electric output if any;

(c) A detailed engineering assessment of fuel efficiency, showing that the proposed facility is a high efficiency cogeneration facility under the definition in OAR 345-001-0010. The person shall provide calculations in sufficient detail to facilitate independent review by the Department. The person shall state the underlying assumptions necessary to support the calculation including assumptions concerning the energy content of fuel displaced; and

(d) A description of the facility, including the thermal host, the proposed energy facility, the location by address as well as township and range and any associated linear equipment needed.

(6) In a request for an exemption of a small generating plant or expansion of a small generating plant, as defined in OAR 345-001-0210, the person shall include the following information:

(a) A description of the proposed small generating plant or proposed expansion to a small generating plant and a description of related or supporting facilities;

(b) Identification of the person or persons who will construct, operate and own the plant;

(c) An analysis of the factors described in OAR 345-001-0210(3); and

(d) Any other information the Department of Energy determines the Council needs to make the finding described in OAR 345-001-0210(3).

(7) In a request for an exemption under OAR 345-015-0350(5) for a plant that converts biomass to a liquid fuel, the person shall include the following information:

- (a) A description of the proposed plant, including, but not limited to, the location, acreage and annual production capacity of the proposed plant and the type of liquid fuel the plant will produce;
- (b) A description of the feedstock verifying that the facility will use only the types of feedstock described in ORS 469.320(2)(f);
- (c) The identity of the affected local government that has given land use approval under the applicable acknowledged comprehensive plan and land use regulations and copies of all land use approval documents the local government has issued;
- (d) The statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility and evidence to support a finding by the Council that the facility complies with those goals and rules;
- (e) A description of the expected electrical loads and fuel needs of the facility and a statement verifying that the facility requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate; and
- (f) A statement verifying that the plant will produce synthetic fuel, at least 90 percent of which will be used in an industrial or refueling facility located within one mile of the facility or will be transported from the facility by rail or barge and evidence that adequate rail and barge facilities are available to serve the proposed site.
- (8) A request for an exemption under OAR 345-015-0350(6) for a standby generation facility is not required.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.320

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