



# Oregon

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**To:** Energy Facility Siting Council

**From:** Christopher M. Clark, Siting Policy Analyst & Rules Coordinator

**Date:** June 10, 2022

**Subject:** Agenda Item A/H (Hearing/Action Item): 2022 Carbon Dioxide Standards Rulemaking Hearing for the June 23-24, 2022, EFSC Meeting

**Attachments:** Attachment 1: Notice of Proposed Rulemaking  
Attachment 2: Public Comments  
Attachment 3: Recommended Responses to Public Comments (June 23).

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## SUMMARY AND STAFF RECOMMENDATION

At its meeting on April 22, 2022, the Council initiated formal proceedings to adopt rules implementing HB 2021 (2021) and updating the carbon dioxide emissions standards in OAR chapter 345, division 024. Staff issued a Notice of Proposed Rulemaking containing the proposed rules under consideration by Council on April 29, 2022. The notice is included as **Attachment 1** to this staff report.

The Notice of Proposed Rulemaking began a public comment period on the proposed rules. All written comments must be received by 5:00 pm on June 23, 2022, to be considered. An opportunity for oral comments will be provided at a rulemaking hearing scheduled to be held on June 23, 2022, at 5:00 pm. The Council will not consider comments provided after the close of the rulemaking hearing unless the comment period is extended for everyone.

After fully considering written and oral comments provided before the deadline described above and determining if changes to the proposed rules are needed to address those comments, staff recommends that the Council adopt permanent rules.

## BACKGROUND

In 1997, the legislature removed the Council's ability to consider the need for new generating facilities, and instead, established new carbon dioxide emissions standards for fossil-fueled power plants. The new law also directed the Council to adopt standards addressing the impacts of carbon dioxide emissions from other types of facilities on climate change.<sup>1</sup> This landmark legislation was the first of its kind in the United States.

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<sup>1</sup> See ORS 469.310, 469.501 and 469.503 as amended by Oregon Laws 1997, chapter 428.

In 1999, the Council adopted rules establishing carbon dioxide emissions standards for base-load gas plants, non-base load power plants, and non-generating facilities such as compressor stations. Under these rules, a facility must meet the emissions standard through the use of efficient technology, monetary offsets, or a combination of the two. The initial rules set the carbon dioxide emission standard at 0.70 pounds of carbon dioxide per kilowatt hour of net electrical output.<sup>2</sup> The Council amended the standards once in 2000<sup>3</sup>, and again in 2018 to 0.614 pounds of carbon dioxide per kilowatt hour of net electrical output.<sup>4</sup> The Council has also revised the monetary offset rate used to achieve compliance with the emissions standard several times. The rate was most recently amended in 2020, when the Council set the rate to \$2.85 per ton of carbon dioxide emissions.<sup>5</sup>

In 2021, the legislature once again acted to address climate change by passing HB 2021. The bill contains a broad range of provisions intended to assist Oregon's transition to 100% clean energy. One such provision, which has been codified as ORS 469.413, establishes new requirements for new and amended site certificates for fossil-fueled power plants:

“Notwithstanding ORS 469.320 and 469.405, the Energy Facility Siting Council may not:

*(1) Issue a site certificate for a new generating facility that produces electric power from fossil fuels, including natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material, unless the council determines that a new generating facility will generate only nonemitting electricity as defined in ORS 469A.400; or*

*(2) Approve the amendment of a site certificate for an energy facility described under subsection (1) of this section that was granted prior to September 25, 2021, in a manner that would significantly increase the gross carbon dioxide emissions that are reasonably likely to result from the operation of the energy facility.”<sup>6</sup>*

Rulemaking is needed to implement the provisions of ORS 469.413, to establish clear standards and procedures for future siting decisions related to fossil-fueled power plants, and to clarify what constitutes a “significant increase” in the gross carbon dioxide emissions that are reasonably likely to result from operation of a fossil-fueled power plant.

ORS 469.413 establishes requirements for new fossil fueled power plants, but the existing carbon dioxide emissions standards adopted under ORS 469.503(2) continue to be applicable to nongenerating facilities and may apply to existing fossil fueled power plants under limited

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<sup>2</sup> EFSC 2-1999, filed and effective April 14, 1999

<sup>3</sup> EFSC 1-2000, filed and effective February 2, 2000

<sup>4</sup> EFSC 1-2018, filed and effective July 18, 2018

<sup>5</sup> EFSC 2-2020, filed June 29, 2020 and effective July 1, 2020.

<sup>6</sup> 2021 Oregon Laws chapter 508, section 28

circumstances. As a result, the standards need to be updated to ensure that carbon dioxide emissions are mitigated to the full extent allowed by law.

### **SUMMARY OF PROPOSED RULES**

At its April 22, 2022, meeting, the Energy Facility Siting Council initiated formal proceedings to adopt rules for the implementation of HB 2021 (2021) and updates to the carbon dioxide emissions standards in OAR chapter 345, division 024.

The proposed rules include a number of proposed rulemaking actions, including but not limited to:

- Amending OAR 345-024-0500 to incorporate the new requirements and clarify the standards applicable to the review of an application for a new fossil-fueled power plant.
- Amending OAR 345-024-0550, 345-024-0590, and 345-024-0620 to reset emissions standards based on the most efficient gas-fired combined cycle combustion turbine plant that is commercially demonstrated and operating in the United States.
- Amending OAR 345-024-0580 to increase the monetary offset rate for carbon dioxide emissions from \$2.85 to \$4.27 per ton of carbon dioxide emissions.
- Amending OAR 345-020-0011 and 345-021-0010 and adopt new rules to establish specific application requirements for fossil-fueled power plants and other facilities that emit carbon dioxide.
- Amending OAR 345-027-0375 to implement new requirements for amendments to existing site certificates for fossil-fueled power plants and defining what is considered to be a "significant increase" in gross carbon dioxide emissions.
- Making non-substantive organizational and clerical changes to the rules.

Complete text of the proposed rules can be found in **Attachment 1**.

### **PUBLIC COMMENTS AND RULEMAKING HEARING**

The Notice of Proposed Rulemaking establishes a public comment period on the proposed rules and schedules a rulemaking hearing to begin at 5:00 pm on June 23, 2022. The purpose of the hearing is to take public comment on the Council's proposed rule, including any questions, concerns, or support, the public may have about the proposed rule language. In particular, the Council invites public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business. The hearing will be conducted by the Council's Rules Coordinator. The Council will not respond to questions or comments during the hearing but may ask commenters clarifying questions.

In addition to the opportunity to provide oral comments at this hearing, the Council will accept written comments on the proposed rules until 5:00 pm on June 23, 2022. Information about how interested members of the public may submit written public comment is provided in the attached Notice of Proposed Rulemaking, and on the Council's rulemaking webpage:

[www.tinyurl.com/EFSCRulemaking](http://www.tinyurl.com/EFSCRulemaking).

Any comments received prior to this deadline will be added to the “[Siting Docket](#)” and will be added to the comment packet included as **Attachment 2** to this staff report. Updated comment packets will be provided to the Council prior to the council’s consideration of permanent rules.

### **COUNCIL CONSIDERATION OF PERMANENT RULES**

The Council may adopt permanent rules after fully considering any written or oral comments provided before the end of the public comment period. The Council may make changes to the proposed rules as needed to address public comments, including any changes needed to reduce adverse economic impacts on businesses. Prior to the meeting on June 23, 2022, staff will provide a summary of major issues presented in public comments as well as recommended responses as **Attachment 3** to this staff report.

As part of this rulemaking, the Council will also need to determine:

- The rate of carbon dioxide emissions per kilowatt hour of net electric output for the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States. The Council may reset the carbon dioxide emissions standard under OAR 345-024-0550, 345-024-0590, and 345-024-0620 at 17 percent below this rate.
- That amending the carbon dioxide emissions standards under OAR 345-024-0590 and 345-024-0620 as described above will accomplish the principles listed under ORS 469.503(2)(b), or will reflect a balancing of those principles.
- That amending OAR 345-024-0580 to increase the monetary offset rate for carbon dioxide emissions from \$2.85 to \$4.27 per ton of carbon dioxide will be economically achievable with the modified rate for natural gas-fired power plants.

Staff will provide recommendations on each of these required findings in separate testimony. This testimony will be added to the Comment packet included as Attachment 2 to this staff report and provided to the Council prior to the rulemaking hearing on June 23.