



Oregon

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To: Energy Facility Siting Council

From: Tom Jackman, Rules Coordinator

Date: December 19, 2025

Subject: Agenda Item G (Action Item): Exemption Rulemaking NOPR Consideration for the December 19, 2025 EFSC Meeting

Attachments: Attachment 1: Draft Proposed Rules
Attachment 2: Staff Report on High Efficiency Cogeneration Exception

STAFF RECOMMENDATION

Staff requests the Council's authorization for staff to issue a Notice of Proposed Rulemaking based on proposed amendments to its rules as shown in Attachment 1.

BACKGROUND

As part of the 2025-2027 Rulemaking Schedule, the Council directed staff to explore a rulemaking designed to update Council's rules as they relate to the process for seeking an exemption from the requirement to obtain a site certificate. As laid out in ORS 469.320(2), certain energy facilities may be exempt from the requirement to obtain a site certificate. One such example would be a high efficiency cogeneration plant, which is an energy facility that "sequentially produces electrical energy and useful thermal energy from the same fuel source" that also meets certain efficiency requirements set in statute and updated by the Council.¹ The analysis for whether this efficiency requirement should be updated as part of this rulemaking is found in Attachment 2. Depending on the type of facility, the person who wishes to claim an exemption is required to submit an exemption request subject to Council's review and approval. This process is laid out in Council's rules in OAR 345-015-0350 – 0380.

It should be noted that as laid out in statute, proposed energy facilities in the state of Oregon are subject to the jurisdiction of the Council. Would-be operators of energy facilities in the state of Oregon can seek to be exempted from needing to obtain a site certificate, but not from oversight entirely. They still must receive local land use approval as well as approval by the Oregon Department of Environmental Quality.

¹ ORS 469.320(2)(c)

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SUMMARY OF PROPOSED RULES

This rulemaking project was designed to evaluate several outstanding policy questions related to exemptions, including:

- Whether the Council may impose conditions on an exemption;
- Ongoing monitoring and reporting requirements for exempt facilities;
- The process for loss of an exemption; and
- Whether increased efficiency values are appropriate for high-efficiency cogeneration plants to qualify for an exemption.

These proposed changes are as follows:

345-001-0010 – General Provisions (High Efficiency Cogeneration Plant Definition)

The proposed changes suggest updating the efficiency requirements needed to qualify for an exemption as a “high efficiency generation facility.” Not to be confused with a combined cycle gas turbine (CCGT) plant, which uses waste heat to generate additional electricity, high efficiency cogeneration plants contemplated by the statute must produce “useful thermal energy,” which is energy used onsite to offset heat energy that would otherwise need to be generated, such as to power a water heater for college dorms or at an industrial facility.

ORS 469.320(2)(c)(B) states that the Council “shall ensure that the fuel chargeable to power heat rate value for facilities [qualifying under this exemption] remains significantly lower than the fuel chargeable to power heat rate value for the best available, commercially viable thermal power plant technology at the time of the revision.” The research and analysis which lead to the values being proposed (increasing the efficiency values from 6,000 to 5,000 Btu/kWh and from 5,000 to 4800 Btu/kWh, depending on facility size) are laid out in the staff memorandum as Attachment 2.

345-015-0350 – Council Determination of Exemption

The proposed changes clarify the topic of Council imposition of conditions on an exemption by explicitly allowing for it. The purpose here is to provide a means for the Council to ensure that exemption holders do not use the exemption process as a means to “backdoor” – whether intentionally or inadvertently – a facility that initially meets the exemption criteria, but is modified to the extent that it becomes a facility that no longer meets that criteria.

345-015-0360 – Requests for an Exemption

The proposed changes identify what information needs to be submitted, e.g., a description of the proposed facility, to request an exemption, as well as the process for how the Department is required to respond to requests.

345-015-0370 – Consideration, Conditions, and Monitoring of Exemptions

The proposed changes clarify the process and nature of the Council adding conditions to an exemption approval, along with the reporting process the requester must use if the exemption is granted. The annual reporting requirement is intended to ensure that facilities do not transition to a state whereby they no longer qualify for an exemption. There is also a proposed addition of a public record keeping requirement for the Department, to ensure the public is informed as to any extensions granted, including any associated conditions.

345-015-0380 – Loss of Exemption

The proposed changes clarify the process for loss of an exemption. This includes the proposed creation of a formal process and timeline.