



## NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 345

**DEPARTMENT OF ENERGY****ENERGY FACILITY SITING COUNCIL****FILED**

12/31/2025 4:52 PM

ARCHIVES DIVISION

SECRETARY OF STATE

**FILING CAPTION:** Clarifying Application for Energy Facility Siting Exemption, Including Compliance and Potential Loss. Updating Efficiency Values.

**LAST DAY AND TIME TO OFFER COMMENT TO AGENCY:** 02/28/2026 5:00 PM

*The Agency requests 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.*

*A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.*

CONTACT: Tom Jackman

503-551-7603

tom.jackman@energy.oregon.gov

550 Capitol St. NE

Salem, OR 97301

Filed By:

Thomas Jackman

Rules Coordinator

### NEED FOR THE RULE(S)

The legislature established the Energy Facility Siting Council (EFSC) to oversee a comprehensive program for the siting, monitoring and regulation of energy facilities in Oregon. To this end, the Council must establish rules and standards to ensure that the siting, construction and operation of energy facilities is accomplished in a manner consistent with the protection of public health and safety and in compliance with Oregon's energy, land use, and environmental protection policies.

Oregon statute directs that the Council exempt certain energy facilities from the requirement to obtain an energy facility site certificate (see ORS 469.320). The draft rules update the Council's rules that implement the process for obtaining an exemption. This is being done to make the process easier to follow and to reduce confusion with certain aspects of the process, such as how the possible loss of an exemption would work.

Lastly, the proposed rules follow direction from the legislature to update the efficiency values needed to qualify as a high-efficiency cogeneration plant. See ORS 469.320(3). A review by the Department led to the conclusion that the efficiency values needed to be increased to match advances in thermal power plant efficiencies.

### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Staff Report and Supporting Materials for Agenda Item G of the December 19, 2025 Energy Facility Siting Council Meeting, available from: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Council-Meetings.aspx>

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

The adoption and amendment of the rules herein are intended to update the energy siting process related rules in relatively minor ways. It is not clear that this rulemaking would have a direct impact on racial equity in this state.

## FISCAL AND ECONOMIC IMPACT:

The rules are thus not expected to create additional expenditures or revenues for state agencies or units of local government.

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## 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).*

These rules will apply to persons seeking an exemption from needing a site certificate for an energy facility. There is a new annual reporting requirement which may introduce a small cost increase to comply with the new rules.

No direct fiscal impacts or administrative costs to state agencies or units of local government are expected to result from these rules.

It is difficult to estimate the number of small businesses subject to the rules as so few exemptions have been applied for.

If a small business were to apply for an exemption, the impacts would be identical to those experienced by large businesses. Such impacts are not expected to be significant nor disproportionately affect small businesses as compared to other businesses because the impact of the rules is not related to the size of the business proposing a project but to the size and location of the project being proposed.

The expected reporting, recordkeeping and administrative activities and other costs required to comply with the rules would be similar to those required under the current rules, with the exception of the new annual reporting requirement identified above. We note that as part of the siting process, applicants must demonstrate that they have the ability to design, construct and operate the proposed facility in compliance with other state regulations and in a manner that protects public health and safety. We note that a business that has this ability, or access to the technical expertise needed to demonstrate this ability, should not be disproportionately burdened by this rule regardless of its size. Because the proposed rules would only potentially affect a small number of small businesses, would only result in relatively small changes in costs of compliance, and would affect large and small energy developers equally, we do not expect the proposed rules to have an adverse impact on small businesses.

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

Small businesses were not specifically consulted during the development of these rules.

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## WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The proposed changes are relatively minor, and the universe of affected parties is very small.

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## RULES PROPOSED:

345-001-0010, 345-015-0350, 345-015-0360, 345-015-0370, 345-015-0380

AMEND: 345-001-0010

RULE SUMMARY: Updating the efficiency values needed to qualify as a high-efficiency cogeneration facility.

## CHANGES TO RULE:

## Definitions ¶

In this chapter, unless the context requires otherwise or a term is specifically defined within a division or a rule, terms have the meaning provided in ORS 469.300 and the following definitions.¶

(1) "Analysis area" means the area or areas specifically described in the project order issued under OAR 345-015-0160(1), containing resources that the proposed facility may significantly affect. The analysis area is the area for which the applicant must describe the proposed facility's impacts in the application for a site certificate. A proposed facility might have different analysis areas for different types of resources. For the purpose of submitting an application for a site certificate in an expedited review granted under 345-015-0300 or 345-015-0310, the analysis areas are the study areas defined in this rule, subject to modification in the project order.¶

(2) "Applicant" as defined in ORS 469.300 or, if an application has not been submitted, a person who has submitted, or intends to submit, a notice of intent or a request for expedited review.¶

(3) "Background radiation" means the direct radiation (gamma) and concentrations of potential radionuclide contaminants in construction materials and the environment in the vicinity of the plant not associated with the nuclear operation and retirement of the facility. Background must be determined as follows:¶

(a) For direct radiation, the results of any background measurements taken prior to operation of the facility must be provided and 6 to 10 measurements must be taken in areas in the vicinity of the site with materials and/or geological formations representative of the site that have not been affected by the operation and retirement of the facility. Background must be calculated at the average and at the 95% confidence level.¶

(b) Environmental samples must be taken for soil, sediment, water, and other materials present at the facility site that could have been affected by facility operations and retirement. Measurements for these samples must be calculated at the average and 95% confidence levels, based on 6 to 10 measurements. Background environmental samples must be taken at locations on site or in the immediate vicinity of the site which are unaffected by plant operations. Background must be calculated at the average and 95% confidence levels, based on 6 to 10 measurements at each location.¶

(c) For construction material such as concrete, asphalt, block, brick and other materials used to construct the buildings and systems at the site, representative samples of materials unaffected by site operations must be selected and surveyed. Six to ten samples of each material must be taken to determine the level of naturally occurring and artificially induced concentrations of naturally occurring radioactivity present. Measurements must include direct radiation (beta-gamma and alpha), wipes and qualitative and quantitative laboratory analyses. Concentrations of fission and activation products from historical fallout must be characterized as well.¶

(d) All measurements must be made using appropriate instruments, properly calibrated, and in sufficient number to determine compliance with requirements.¶

(4) "Certificate holder" means the person to whom a site certificate has been granted by the Council pursuant to this chapter.¶

(5) "Chair" means the chair of the Energy Facility Siting Council.¶

(6) "Committed firm energy and capacity resources" means generating facilities or power purchase contracts that are assured to be available to the energy supplier over a defined time period. Committed firm energy and capacity resources include existing generating facilities, existing power purchase contracts and planned generating facilities that sponsors have made firm commitments to develop.¶

(7) "Corridor" means a continuous area of land not more than one-half mile in width and running the entire length of a proposed transmission line or pipeline. "Micrositing corridor" is defined below in this rule.¶

(8) "Council" means the Energy Facility Siting Council established under ORS 469.450.¶

(9) "Council Secretary" means the person designated by the Director of the Oregon Department of Energy to serve as secretary to the Council.¶

(10) "Department" means the Oregon Department of Energy created under ORS 469.030.¶

(11) "Direct cost" means the discounted sum of all monetary costs to the ultimate consumer over the lifetime of the facility or resource plan or resource strategy.¶

(12) "Energy facility" includes:¶

(a) An energy facility as defined in ORS 469.300; ¶

(b) A small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210; and ¶

(c) A facility for which a developer or governing body has elected to defer regulatory authority to the Council under ORS 469.320(8).¶

(13) "Energy supplier" means:¶

(a) A retail electric utility, a federal power marketing agency, or a local gas distribution company, or ¶

(b) A person or public agency generating electric energy for its own consumption, lawfully purchasing electric energy directly from a generator for its own consumption, or transmitting or distributing natural or synthetic gas

from an energy facility for its own consumption.¶

(14) "Existing corridor," as used in ORS 469.300 and 469.442, means the right-of-way of an existing transmission line, not to exceed 100 feet on either side of the physical center line of the transmission line or 100 feet from the physical center line of the outside lines if the corridor contains more than one transmission line.¶

(15) "Facility" as defined in ORS 469.300 or a small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210 together with any related or supporting facilities.¶

(16) "Facility substantially similar to the proposed facility" means:¶

(a) A facility that uses the same fuel and substantially similar technology, that has substantially the same in-service date, and that has a direct cost not substantially greater than that of the proposed facility; or¶

(b) A facility that is demonstrated to provide as good a mix of reliability, compatibility with the power system, strategic flexibility, environmental impact and direct cost as the proposed facility taking into account reasonable trade-offs among such factors.¶

(17) "Fossil fuel" means natural gas, petroleum, coal and any form of solid, liquid or gaseous fuel derived from such materials that is used to produce useful energy.¶

(18) "Fuel chargeable to power heat rate" means the net heat rate of electric power production during the first twelve months of commercial operation. A fuel chargeable to power heat rate is calculated with all factors adjusted to the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate using the formula,  $FCP = (FI - FD) / P$ , where:¶

(a)  $FCP$  = Fuel chargeable to power heat rate.¶

(b)  $FI$  = Annual fuel input to the facility applicable to the cogeneration process in British thermal units (higher heating value).¶

(c)  $FD$  = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a cogeneration facility instead of from an alternate source, in British thermal units (higher heating value). (d)  $P$  = Annual net electric output of the cogeneration facility in kilowatt-hours.¶

(19) "High efficiency cogeneration facility" means an energy facility, except coal and nuclear power plants, that sequentially produces electrical and useful thermal energy from the same fuel source and under average annual operating conditions:¶

(a) Has a nominal electric generating capacity of less than 50 megawatts and the fuel chargeable to power heat rate value is not greater than 555000 Btu per kilowatt-hour (higher heating value); or¶

(b) Has a nominal electric generating capacity of 50 megawatts or more and the fuel chargeable to power heat rate value is not greater than 604800 Btu per kilowatt-hour (higher heating value).¶

(20) "Land use approval" means a final quasi-judicial decision or determination made by a local government that:¶

(a) Applies existing comprehensive plan provisions or land use regulations to a proposed facility;¶

(b) Amends a comprehensive plan map or zoning map to accommodate a proposed facility;¶

(c) Amends comprehensive plan text or land use regulations to accommodate a proposed facility;¶

(d) Applies the statewide planning goals to a proposed facility; or¶

(e) Takes an exception to the statewide planning goals adopted by the Land Conservation and Development Commission for a proposed facility.¶

(21) "Micrositing corridor" means a continuous area of land within which construction of facility components may occur, subject to site certificate conditions.¶

(22) "Mitigation" means taking one or more of the following actions listed in order of priority:¶

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;¶

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;¶

(c) Partially or completely rectifying the impact by repairing, rehabilitating or restoring the affected environment;¶

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures;¶

(e) Partially or completely compensating for the impact by replacing or providing comparable substitute resources or environments; or¶

(f) Implementing other measures approved by the Council.¶

(23) "Net electric power output" means the electric power produced or capacity made available for use.

Calculation of net electric power output subtracts losses from on-site transformers and power used for any on-site electrical loads from gross capacity as measured or estimated at the generator terminals for each generating unit.¶

(24) "Owner" means owner or lessee under a capital lease.¶

(25) "Permit" means any permit, license, certificate or other approval required by federal law, state statute, state administrative rule or local government ordinance.¶

(26) "Protected Area" means an area designated as one or more of the following:¶

(a) A National Park or other unit of the National Park System described under 54 U.S.C. 100501;¶

- (b) A National Monument established under 54 U.S.C. 320301 or by an act of Congress;¶
- (c) A Wilderness Area established under 16 U.S.C 1131 et seq. or by an act of Congress;¶
- (d) A Wild, Scenic, or Recreational River included in the National Wild and Scenic River System under 16 U.S.C. 1271 et seq.;¶
- (e) A National Wildlife Refuge included in the National Wildlife Refuge System described under 16 U.S.C. 668dd;¶
- (f) A National Fish Hatchery established under 16 U.S.C. 760aa;¶
- (g) A National Recreation area, National Scenic area, or Special Resources Management Unit established by an act of Congress;¶
- (h) A Wilderness Study Area established under 43 U.S.C. 1782;¶
- (i) Land designated in a federal land management plan or by an act of Congress as:¶
  - (A) An Area of Critical Environmental Concern;¶
  - (B) An Outstanding Natural Area;¶
  - (C) A Research Natural Area;¶
  - (D) An Experimental Forest or Range; or¶
  - (E) A Special Interest Area designated for scenic, geologic, botanic, zoologic, paleontological, archaeological, historic, or recreational values, or combinations of these values;¶
- (j) A state park, wayside, corridor, monument, historic, or recreation area under the jurisdiction of the Oregon Parks and Recreation Department;¶
- (k) The Willamette River Greenway created under ORS 390.310 to 390.368;¶
- (l) A natural area listed in the Oregon Register of Natural Areas under ORS 273.581;¶
- (m) The South Slough National Estuarine Research Reserve, described under ORS 273.553;¶
- (n) A State Scenic Waterway designated under ORS 390.805 to 390.925 and related adjacent lands;¶
- (o) A state wildlife refuge or management area identified in OAR chapter 635, division 008;¶
- (p) A fish hatchery operated by the Oregon Department of Fish and Wildlife;¶
- (q) An agricultural experiment station, experimental area, or research center established by Oregon State University under ORS chapter 567; or¶
- (r) A research forest established by Oregon State University under ORS 526.215.¶

(27) "Related or supporting facilities" as defined in ORS 469.300. The Council interprets the terms "proposed to be constructed in connection with" to mean that a structure is a related or supporting facility if it would not be built but for construction or operation of the energy facility. "Related or supporting facilities" does not include any structure existing prior to construction of the energy facility, unless such structure must be substantially modified solely to serve the energy facility.¶

(28) "Reviewing agency" means any of the following officers, agencies or tribes:¶

- (a) The Department of Environmental Quality;¶
- (b) The Water Resources Commission and the Water Resources Director through the Water Resources Department;¶
- (c) The Fish and Wildlife Commission through the Oregon Department of Fish and Wildlife;¶
- (d) The State Geologist;¶
- (e) The Department of Forestry;¶
- (f) The Public Utility Commission of Oregon;¶
- (g) The Oregon Department of Agriculture;¶
- (h) The Department of Land Conservation and Development;¶
- (i) The Oregon Department of Aviation;¶
- (j) The Pacific Northwest Electric Power and Conservation Planning Council;¶
- (k) The Office of State Fire Marshal;¶
- (l) The Department of State Lands;¶
- (m) The State Historic Preservation Office;¶
- (n) Any other agency identified by the Department;¶
- (o) Any tribe identified by the Legislative Commission on Indian Services as affected by the proposed facility;¶
- (p) The governing body of any incorporated city or county in Oregon within the study area as defined in OAR 345-001-0010 for impacts to public services;¶
- (q) Any special advisory group designated by the Department under OAR 345-015-0115; and¶
- (r) The federal land management agency with jurisdiction if any part of the proposed site is on federal land.¶

(29) "Significant" means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.¶

(30) "Site" as defined in ORS 469.300. "Energy facility site" means all land upon which an energy facility is located

or proposed to be located. "Related or supporting facilities site" means all land upon which related or supporting facilities for an energy facility are located or proposed to be located.¶

(31) "Site boundary" means the perimeter of the site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micrositing corridors proposed by the applicant.¶

(32) "Solar photovoltaic power generation facility" includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores or transfers that electricity. This includes photovoltaic modules, mounting and tracking equipment, posts, electrical cabling, inverters, transformers, collection systems, fencing, and other components.¶

(a) For the purposes of applying the acreage standards of ORS 469.300(11)(a)(D), the land used by a solar photovoltaic power generation facility includes the land occupied by its related or supporting facilities. Related or supporting facilities are not otherwise considered to be components of the solar photovoltaic power generation facility;¶

(b) A proposed solar photovoltaic power generation project may be determined to be an expansion of any existing or proposed solar photovoltaic power generation facility that is:¶

(A) Within one mile of the proposed project; and¶

(B) Determined to be under common ownership with the proposed project. Projects connected to the same parent company or individuals will be considered to be in common ownership, regardless of the operating business structure;¶

(c) As used in this rule and OAR 345-001-0250, a "proposed solar photovoltaic power generation project" means:¶

(A) The proposed development of a separate and independent solar photovoltaic power generation facility; or¶

(B) The proposed expansion or modification of a proposed or existing solar photovoltaic power generation facility.¶

(33) "Special nuclear material" means plutonium, uranium-233 or uranium enriched in the isotope 233 or in the isotope 235.¶

(34) "Strategic flexibility" means the value of a resource as part of a strategy to manage variance in costs or risks caused by future uncertainty.¶

(35) "Study area" means an area defined in this rule. Except as specified in subsections (f) and (g), the study area is an area that includes all the area within the site boundary and the area within the following distances from the site boundary:¶

(a) For impacts to threatened and endangered plant and animal species, 5 miles.¶

(b) For impacts to scenic resources and to public services, 10 miles.¶

(c) For land use impacts, wildfire risk, and impacts to fish and wildlife habitat, one-half mile.¶

(d) For impacts to recreational opportunities, 5 miles.¶

(e) For impacts to protected areas described in OAR 345-022-0040, 20 miles.¶

(f) The distance stated in subsection (a) above does not apply to surface facilities related to an underground gas storage reservoir.¶

(g) The distances stated in subsections (a) and (d) above do not apply to pipelines or transmission lines.¶

(36) "Substantial loss of steam host" means the thermal energy user associated with a high efficiency cogeneration facility has made such long-term changes in its manner and magnitude of operation as to result in the loss of one or more work shifts for at least a year, accompanied by at least a 30 percent resultant reduction in the use of thermal energy.¶

(37) "Substantial loss of fuel use efficiency" means an increase in the fuel chargeable to power heat rate at a high efficiency cogeneration facility to greater than 7000 Btu per kilowatt-hour (higher heating value), or reduction of the fraction of energy output going to the thermal energy user associated with the facility to less than 20 percent, as a result of a substantial loss of steam host. Substantial loss of fuel use efficiency does not include efficiency losses due to equipment wear or condition.¶

(38) "Surface facilities related to an underground gas storage reservoir" means structures or equipment adjacent to and associated with an underground gas storage reservoir that are proposed to be built in connection with an underground gas storage reservoir and include, but are not limited to:¶

(a) Facilities such as stripping plants, main line dehydration stations, offices, warehouses, equipment shops, odorant storage and injection equipment and compressors;¶

(b) Pipelines, such as gathering lines and liquid collection lines; and¶

(c) Roads and road maintenance equipment housing at the reservoir site.¶

(39) "Total energy output" means the sum of useful thermal energy output and useful electrical energy output.¶

(40) "Useful thermal energy" means the verifiable thermal energy used in any industrial or commercial process, heating or cooling application;¶

(41) "Vice-chair" means the vice-chair of the Energy Facility Siting Council.

Statutory/Other Authority: ORS 469.470, ORS 469.503

Statutes/Other Implemented: ORS 469.300-469.570, ORS 469.590-469.619, ORS 469.992, ORS 469.480

RULE SUMMARY: Simplifying rule language.

CHANGES TO RULE:

345-015-0350

Council Determination of Exemption ~~¶~~

The Council shall, upon a complete written request, determine whether a proposed facility or proposed expansion modification of a facility is exempt from the requirement to obtain a site certificate. A site certificate is not required for:~~¶~~

(1) A facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same qualifies for exemption under ORS 469.320(8).~~¶~~

(1) The Council may impose conditions when granting an exemption to make its determinations meaningful and increases electric generating capacity, if the site is not enlarged and enforceable, including eligibility criteria or operational limits.~~¶~~

(a2) The ability of the facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour (higher heating value) greater than it was on August 2, 1993; or~~¶~~

(b) The facility expansion 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.~~¶~~

(2) Construction or expansion of any 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 or successor agency.~~¶~~

(3) A high efficiency cogeneration facility, as defined in OAR 345-001-0010, following facilities are exempt under this rule:~~¶~~

(a) Facilities meeting the criteria in ORS 469.320(2)(a) through (g);~~¶~~

(b) A high efficiency cogeneration facility, as defined in OAR 345-001-0010, that meets or exceeds the efficiency standard established in ORS 469.320(2)(c), as adopted or adjusted by the Council to reflect changes in cogeneration technology; or~~¶~~

(4c) A small generating plant or an expansion to a small generating plant, as defined in OAR 345-001-0210, if the Council finds that the accumulated effects do not have a magnitude similar to a single generating plant with an average electric generating capacity of 35 megawatts or more, as described in OAR 345-001-0210(3).~~¶~~

(5) An energy facility as defined in ORS 469.300(11)(a)(G), if the facility meets the requirements of 469.320(2)(f).~~¶~~

(6) A standby generation facility as defined under ORS 469.320.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.320

RULE SUMMARY: Modifying how rule language is organized. Pulling language from OAR 345-015-0370. Clarifying what must be submitted as part of a request for an exemption.

CHANGES TO RULE:

345-015-0360

Contents of Requests for an Exemption for a Standby Generator ¶

(1) Except as noted in (89), 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; or modification of an energy facility. The request must demonstrate eligibility under OAR 345-015-0350 and include all applicable information listed below:¶

- (a) A description of the facility, including capacity, fuel type, and location;¶
- (b) Identification of ownership and operational control;¶
- (c) Any existing Council authorizations applicable to the facility;¶
- (d) Data supporting exemption eligibility under the relevant ORS or OAR provision;¶
- (e) Any proposed mitigation or reporting commitments; and¶
- (f) Any other information required to show the facility as proposed meets all applicable requirements outlined in ORS 469.320.¶

(2) 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 OAR 345-015-0370 or has issued a site certificate or an amendment to an existing site certificate.¶

(23) 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 addition to what is requested in section (1), 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.¶

(34) 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 addition to what is requested in section (1), in support of the request:¶

- (a) The information described in subsections (23)(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).¶

(45) 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, in addition to what is requested in section (1), 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.¶

(56) 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 addition to what is requested in section (1), 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. ¶

(67) 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, in addition to what is requested in section (1): ¶

(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). ¶

(78) 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, in addition to what is requested in section (1): ¶

(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. ¶

(89) Requests for an exemption for a standby generation facility under OAR 345-015-0350(6) are not required RS 469.320(2)(g) are not required. ¶

(10) Within 60 days after receipt of an exemption request, the Department must notify the applicant whether the request is complete. In the notification, the Department must: ¶

(a) State that the request is complete and state the date of filing; ¶

(b) State that the request is incomplete, and: ¶

(A) Describe any information needed to complete the request to the extent known to the Department at the time of the notification; ¶

(B) Ask the applicant to submit the needed information by the deadline; and ¶

(C) Estimate the additional time the Department will need to make a determination of completeness; or ¶

(c) Explain the reasons why the Department cannot determine completeness and estimate the additional time the Department will need to make a determination of completeness. ¶

(11) The Council shall act within 60 days of Department recommendation, approving, approving with conditions, or denying the request. ¶

(12) When submitting a request for exemption, the requestor shall submit the fee established by the Council as described in ORS 469.441. The requestor is liable for reimbursement of any review expenses beyond the initial fee that are incurred by the Department of Energy and Council relating to the review and decision by the Council.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.320

RULE SUMMARY: Moving some of rule language to OAR 345-015-0360. Explicitly allowing for approval of exemptions by Council with conditions and creating annual compliance requirement and an obligation for the Department to maintain a list of all facilities that have received an exemption.

CHANGES TO RULE:

345-015-0370

Consideration of Request for, Conditions, and Monitoring of Exemption ~~s~~ ¶

(1) ~~Except as described in section (2), within 45 days after receipt of a request for exemption Upon receipt of a complete request, the Department of Energy shall preview the request for exemption for completeness, prepare findings and a provide the requestor with either a notice of filing of the request for exemption or a request for additional information. When the Department finds the submitted request for exemption is complete, the Dposed order for Council review. The Council may approve an exemption with conditions.~~ ¶

(2) ~~Conditions may include limitations on generating capacity, fuel use, site boundary, facility operations, repaortment shall issue a notice of filing. Within 60 days after issuing the notice of filing, the Department shall review the request, prepare a proposed order for Council action and bring the matter before the Council for action.~~ ¶

(2) ~~When submitting a request for exemption, the requestor shall submit the fee established by the Council as described in ORS 469.441. The requestor is liable for reimbursement of any review expenses beyond the initial fee that are incurred by the Department of Energy and Council relating to the review and decision by the Counciling, and compliance verification.~~ ¶

(3) Exemption holders must submit an annual compliance statement describing the construction and/or operation of the facility consistent with the exemption approval and any applicable conditions. ¶

(4) The Department shall maintain on its webpage a list of all facilities for which Council has granted an exemption and any associated conditions.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.320, 469.421, 469.441

RULE SUMMARY: Clarifying the process for loss of an exemption.

CHANGES TO RULE:

345-015-0380

Loss of Exemption ~~¶~~

(1) ~~In accordance with ORS 469.320(6), any person operating a facility for which the Council previously granted an exemption under ORS 469.320(2)(c) and that has experienced a substantial loss of steam host resulting in a substantial loss in fuel use efficiency must submit an application for a site certificate within 12 months of the loss.~~  
~~¶~~

(2) ~~Any person proposing to enlarge the site of a facility previously determined to be exempt under 469.320(2)(a) must submit~~The Council may revoke or modify an exemption if a facility no longer meets eligibility criteria, violates exemption conditions, or the Council determines that the exemption was based on false information.  
~~¶~~

(2) ~~Upon a preliminary finding of noncompliance, the Department shall issue written notice and application for a site certificate.~~  
~~¶~~

(3) ~~Any person submitting an application for a site certificate under section (1) or (2) may request expedited review as described in OAR 345-015-0300 or 345-015-0310 if the average electric generating capacity of the energy facility is less than 100 megawatts.~~  
~~¶~~

(4) ~~Any person operating a plant that the Council has determined exempt under OAR 345-015-0350(5) must~~allow 30 days for response.  
~~¶~~

(3) Following review, the Council may reaffirm, modify, or revoke the exemption in a public meeting.  
~~¶~~

(4) Upon revocation, the facility owner must apply for a site certificate before making any change in the operation of the plant such that the plant would no longer meet the requirements of ORS 469.320(2)(f) or cease operation within a Council-specified timeframe.  
~~¶~~

(5) The Council may impose interim conditions to protect the public or environment during any transition.

Statutory/Other Authority: ORS 469.373, ORS 469.470

Statutes/Other Implemented: ORS 469.320