



# Oregon

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**To:** Oregon Energy Facility Siting Council

**From:** Thomas L. Jackman, Rules Coordinator

**Date:** March 7, 2025

**Subject:** Agenda Item E (Action Item) – Exemptions – Initiation of Informal Rulemaking for the March 21, 2025 EFSC Meeting

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## 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 standby biomass facility "if the plant also produces a secondary fuel used on site for the production of heat or electricity, if the output of the primary fuel is less than six billion Btu of heat a day."<sup>1</sup> 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.<sup>2</sup> 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.

## SCOPE AND OBJECTIVES

This rulemaking would 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; and
- The process for loss of an exemption.

The objective of this rulemaking project would be to increase regulatory certainty regarding what is expected of those who obtain an exemption and also 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

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<sup>1</sup> ORS 469.320(2)(e)

<sup>2</sup> See ORS 469.320(3), which states that it is the responsibility of the "Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption."

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. Lastly, the process for the loss of exemption is something that can be better addressed in the rules.

## **FOCUSED OUTREACH**

During review of the 2025-2027 rulemaking schedule, staff recommended and Council approved this rulemaking to include a Rulemaking Advisory Committee (RAC). Based on a further evaluation of this rulemaking, staff now believes a focused outreach approach would be more appropriate for this rulemaking to develop the initial draft of the rule language. While the use of a RAC is generally the preferred method of generating an initial draft of new or modified rules, the universe of stakeholders who would be affected by the proposed scope of these rules changes is extremely limited, constituting only a few existing and future exempt facility operators. This is especially true given that the scope of this rule change is not intended to affect the ability to seek an exemption, merely the process for monitoring and ensuring compliance with the statutory restrictions on who qualifies for one.

An effort to draft rule language using a more focused outreach to potentially affected stakeholders does not, of course, preclude any who are interested in these rules from providing comments during a future public comment period.

If the Council is not convinced that this approach is the best way forward, staff can attempt to form a RAC.

## **STAFF RECOMMENDATION**

Staff recommends that the Council initiate informal proceedings on the Exemptions Rulemaking, which was approved for the 2025-2027 Rulemaking Schedule. Staff recommends that Council approve the scope and general direction of the rulemaking as outlined below. Staff also requests that the Council approve a focused outreach approach in developing the initial draft of the rules, as opposed to a RAC. Please note that the Council is not being asked to consider proposed rule amendments or the adoption of permanent rules at this time.