

Attachment 1



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.

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Exemptions from Council Jurisdiction

345-001-0010 – General Provisions

(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 ~~5550~~⁵⁰⁰⁰ 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 ~~6000~~⁴⁸⁰⁰ Btu per kilowatt-hour (higher heating value).

Commented [TJ1]: Note that the current rules had an error as they have the efficiency values reversed (the 6000 value should be for the smaller facilities) and additionally the 5550 value should have been 5500, to match the corresponding statute. These proposed edits correct this error and increase the efficiency requirements as directed by statute. See ORS 469.320(3).

345-015-0350 - Council Determination of Exemption

The Council shall, upon a complete written request, determine whether a proposed facility or proposed expansion or modification of a facility qualifies for exemption under ORS 469.320(8).

(1) The Council may impose conditions when granting an exemption to make its determinations meaningful and enforceable, including eligibility criteria or operational limits.

(2) The 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;
- (c) 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).;
- (d) An energy facility as defined in ORS 469.300(11)(a)(G), if the facility meets the requirements of ORS 469.320(2)(f).

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 fuel type and increases electric generating capacity, if the site is not enlarged and:

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(a) 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.

(4) 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 ORS 469.320(2)(f).

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.320

345-015-0360 - Contents of Requests for an Exemption for a Standby Generator

(1) Except as noted in (9), 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.

(3) 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

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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.

(43) 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 (32)(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).

(54) 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.

(65) 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

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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.

(76) 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).

(87) 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.

(98) Requests for an exemption for a standby generation facility under ORS 469.320(2)(g) are not required.

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(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.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.320

345-015-0370 – Consideration, Conditions, and Monitoring of Request for Exemption

(1) Except as described in section (2), within 45 days after receipt of a request for exemption, the Department of Energy shall review the request for exemption for completeness and 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 Department 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 Council.

(1) Upon receipt of a complete request, the Department shall prepare findings and a proposed 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, reporting, and compliance verification.

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Commented [TJ2]: Moved text above, so the request stuff is altogether.

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(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.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.320, ORS 469.421, ORS 469.441

345-015-0380 - Loss of Exemption

(1) 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 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 or cease operation within a Council-specified timeframe.

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

(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 heat 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 an 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 OAR 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 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).

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.320, ORS 469.375



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To: Oregon Department of Energy
From: Tom Jackman
Date: November 20, 2025
Subject: Review and potential revision of Fuel-Chargeable-to-Power Heat Rate Values under ORS 469.320(2)(c)(B)

Executive Summary

- The purpose of EFSC's exemption (referred to as an "exception" in statute) process is to incentivize specifically identified types of EFSC jurisdictional facilities to be designed and constructed in a way that creates benefits for the State of Oregon. Qualifying facilities are not required to go through EFSC's full review process to obtain a site certificate, although these facilities still need to meet other Oregon regulations.
- The benefits of a high efficiency industrial cogeneration facility, also known as a combined heat and power (CHP) facility, is that it uses waste heat from the generation unit for an adjacent industrial purpose, which reduces or eliminates the need to pull electricity from the grid.
- Oregon law requires EFSC to keep Fuel-Chargeable-to-Power (FCP) heat-rate thresholds (a measure of efficiency for a thermal plant) that qualify for this exemption "significantly lower" than the heat rate of the best available, commercially viable thermal power plant technology.
- Current qualifying thresholds (6,000 and 5,500 Btu/kWh, depending on plant size) are no longer significantly lower than modern thermal plants. General Electric's best unit combined cycle gas turbine (CCGT) achieves 5,331 Btu/kWh (note: lower values are more efficient).
- Legislative intent (1993 and updated in 2009) shows the exemption is meant only for CHP, not utility-scale CCGTs.
- Without revision, EFSC would effectively grant exemptions to average-performing CHP plants rather than high efficiency CHP systems.
- Recommended new thresholds:
 - < 50 MW: 5,000 Btu/kWh (\approx 68% efficiency)
 - \geq 50 MW: 4,800 Btu/kWh (\approx 71% efficiency)
- These levels restore a meaningful performance margin and align with both legislative intent and modern CHP capability.

Background

Energy facilities in Oregon are the jurisdiction of the Energy Facility Siting Council. The Oregon legislature passed SB 1016 in 1993 and created an exemption for the need to obtain a site certificate for certain high efficiency cogeneration facilities.¹ This language was updated in 2009,

¹ See ORS 469.320(2)(c)(B).

removing an easier pathway for obtaining this exemption and creating a stricter standard for larger plants, which can more easily hit higher efficiency levels. The exemption was designed solely for high efficiency cogeneration plants, which is clear from the plain text of the statute directing EFSC to periodically update the efficiency levels (emphasis added):

*[T]he council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in subsection (2)(c)(B) of this section 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.**²*

The 1993 legislative history further clarifies this point, which is important as there is a possibility some would-be facility operators may seek to use this exemption to build and operate combined cycle gas turbine (CCGT) facilities under the guise that because they recapture heat, they are “cogeneration” plants that qualify under this exemption. CCGTs were emerging in 1993, but the workgroup responsible for this bill confirmed these types of facilities were not the target of this exemption.³

260 **REP. MARKHAM:** Are steam producers included who produce steam as a result of normal industrial processes?

263 **ACHTERMAN:** In order to qualify for the exemption, you must meet an efficiency standard. The qualification for the exemption is that you have to use the steam for two purposes: electric generation and an industrial process.

Statutory language reinforces this distinction. ORS 469.320 refers to cogeneration output as “useful thermal energy,” a term of art meaning heat or steam that displaces fuel or electricity consumption in an industrial or commercial application. This aligns with federal PURPA terminology:

“Cogeneration facility means equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy;”

In 2009, the legislature updated the statute to establish two FCP thresholds—adding a more stringent one for facilities ≥ 50 MW—reflecting that larger cogeneration plants can more easily achieve higher efficiency:

- Plants smaller than 50 MW: 6,000 Btu/kWh
- Plants greater than 50 MW: 5,500 Btu/kWh

At the time these were adopted (2009), advanced CCGTs averaged around 7,100 Btu/kWh, with the best units reaching roughly 6,500 Btu/kWh. Thus, Oregon’s thresholds provided about a 15–20% performance margin below best-available electric-only technology. Since 2009, CCGT performance has improved by ~1700 Btu/kWh, due primarily to higher turbine firing temperatures and improved heat recovery.

² ORS 469.320(3).

³ House Committee on Natural Resources held on June 29, 1993 (Note that Gail Achterman was an attorney for Stoel, Rives, ET AL, who represented many of those involved in the working group on this bill).

Current Technology Benchmarking for Natural Gas Production (2025)

| Year | Heat rate (Btu/kWh) | Approx. Equivalent Electric Efficiency |
|---|---------------------|--|
| Average of New Units Built 2006-2015 ⁴ | 7,029 | 48.5% |
| Best Available in 2015 ⁵ | 6,600 | 51.7% |
| Best Available in 2025 ⁶ | 5,331 | 64% |

Analysis

The statutory requirement is explicit: FCP heat-rate thresholds must remain “significantly lower” than best available thermal power plant technology. As of 2025, both existing Oregon thresholds (6,000 and 5,500 Btu/kWh) are higher than the current benchmark of 5,331 Btu/kWh. This means that the existing statutory values are no longer “significantly lower than . . . the best-available technology.” CHP systems routinely achieve 65–80% total system efficiency, which corresponds to substantially lower FCP values than even the most efficient CCGTs.⁷

Recommended New FCP Thresholds

| Facility Size | 2009 Rule | Approx. Equivalent Electric Efficiency | Proposed 2025 Update | Approx. Equivalent Electric Efficiency |
|---------------|---------------|--|----------------------|--|
| < 50 MW | 6,000 Btu/kWh | ~57% | 5,000 Btu/kWh | ~68% |
| ≥ 50 MW | 5,500 Btu/kWh | ~62% | 4,800 Btu/kWh | ~71% |

These proposed thresholds restore the performance gap mandated by statute and remain readily achievable for high-efficiency industrial CHP systems.

Conclusion

The Council should revise the FCP heat-rate thresholds downward to maintain statutory compliance. Current values are comparable to typical modern CCGTs and no longer ensure that exempted facilities are distinctly high-efficiency CHP systems.

⁴ <https://www.eia.gov/todayinenergy/detail.php?id=32572&utm>

⁵ <https://www.power-eng.com/operations-maintenance/power-plant-performance-in-2015/>

⁶ <https://www.governova.com/gas-power/products/gas-turbines/7ha>

⁷ <https://www.epa.gov/chp/chps-role-decarbonization>