



Oregon

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To: Energy Facility Siting Council

From: Tom Jackman, Rules Coordinator

Date: April 3, 2026

Subject: Agenda Item C (Action Item): Exemption Rulemaking Consideration Permanent Rules for the April 17, 2026 EFSC Meeting

Attachments: Attachment 1: Draft Proposed Rules
Attachment 2: Staff Report on High Efficiency Cogeneration Exception
Attachment 3: Public Comments

STAFF RECOMMENDATION

Staff requests the Council's authorization for staff to file permanent amended rules with the Secretary of State 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)

On December 19, 2025, the Council directed staff to file a notice of proposed rulemaking and to hold a public hearing, which was held on February 13, 2026. No oral comments were submitted at that time. Two written comments were submitted, which are included in their entirety as Attachment 3.

What follows is a summary of the proposed rules and a review of the written comments, along with staff's response.

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.

PUBLIC COMMENTS

Constance Lee:

Ms. Lee asserts that the proposed exemption rules, while described as clarifying and procedural, would in practice reduce public participation, weaken local accountability, and favor expedited development of large-scale energy projects, particularly in rural communities. She objects that the exemption process does not provide the same procedural opportunities available in a site certificate proceeding, such as contested case hearings, intervenor status, discovery, direct notice to nearby landowners, formal public hearings, and cumulative impact analysis. She also expresses concern that conditional exemptions could be granted without public notice or community input; that annual compliance reporting relies too heavily on applicant self-reporting; that the loss-of-exemption process would be difficult for communities to use; and that proposed timelines for exemption review are too compressed for rural residents with limited resources to respond effectively. She requests changes including public notice and comment for all exemption requests and conditions, formal opportunities for community input before approval, public review of annual compliance filings, strict penalties for noncompliance, consideration of cumulative impacts and local land use conflicts, and preservation of a meaningful community role in exemption decisions

Staff Response:

Staff appreciates the commenter's concerns regarding public participation and local impacts. However, the purpose of the exemption rules is not to create an alternative form of site certificate review for facilities that qualify for exemption, but rather to establish a process for determining whether a proposed facility falls outside the category of facilities required by statute to obtain a site certificate. For that reason, the exemption process is necessarily narrower and more limited than the site certificate process and does not include all of the procedural features applicable to certificate proceedings. The proposed rules are intended to clarify how exemption requests are reviewed, how conditions may be applied where appropriate to ensure continued qualification for exemption, and how compliance and loss-of-exemption provisions would function. Staff does not recommend revising the exemption rules to add the full procedural components of a site certificate proceeding, because doing so would be inconsistent with the distinct and limited function of the exemption framework.

Irene Gilbert (Member of Public)

Ms. Gilbert states that most of the proposed changes to the exemption rules are not problematic and supports lowering the efficiency threshold to ensure that qualifying facilities are high efficiency. However, she asserts that facilities granted exemptions may still have impacts on land use, traffic, and neighboring properties and recommends adding additional requirements to the exemption process. Specifically, she suggests requiring compliance with state and local land use laws, requiring a traffic management plan, and providing notice to nearby landowners along with an opportunity to comment. She further recommends that developers be required to respond to comments and that the Department evaluate comments to determine whether mitigation measures are necessary. The commenter indicates that these additions would help address impacts to adjacent properties and reduce the potential for future disputes or litigation.

Staff Response:

Staff appreciates Ms. Gilbert's support for portions of the proposed rule changes and her focus on addressing potential local impacts. However, Staff does not recommend incorporating the suggested requirements into the exemption rules. The purpose of the exemption framework – set forth in statute, as described above – is to determine whether a facility qualifies for exemption from the statutory requirement to obtain a site certificate, rather than to establish a comprehensive review process comparable to site certificate proceedings or local land use review. Requirements related to land use compliance, traffic management, and mitigation of local impacts are addressed through other applicable regulatory frameworks, including local government permitting processes and other state and federal requirements. Incorporating these elements into the exemption rules would expand the scope of the exemption process beyond its intended function and could effectively duplicate or conflict with other regulatory processes. Staff therefore does not recommend modifying the proposed rules in response to this comment.