

Agenda Item Summary

BACKGROUND

In 2005, the legislature adopted a provision requiring agencies to review rules they adopt no later than five years after the adoption to determine whether the rules had the intended effect and are still needed, the fiscal impact statement was correct or whether changes to the law require the rule to be amended or repealed. Ch 807, Or Laws 2005, codified at ORS 183.405. (Attachment 2) The law mandates these reviews begin with rules adopted in January 2006, and, for the January 2006 rules, be completed before the end of January 2011.

After consultation with the Attorney General's Office, staff has concluded that these reviews do not require the original rules to be reopened for public comment, or even that any special report be prepared, except in cases where a Rule Advisory Committee had been formed to assist in the preparation of the rule. The statute does not require that an agency reopen old issues or reexamine the wisdom of the underlying policy decision it made when the rules were first adopted.

Consistent with the Attorney General's advice, staff has attempted to identify a practical way to comply with the new law without a large administrative burden on the Commission and staff. The Commission is not required to conduct the review, because it has the authority to delegate its authority to the Director, and staff proposes the Commission delegate that authority to the Director.

As proposed in Attachment 3, the Director would perform the reviews on the Commission's behalf, and provide to the Commission a checklist to demonstrate the results of his review. The Commission could then decide to take up particular rules for review as a result of either the Director's recommendation, or based on its own considerations.

PUBLIC INVOLVEMENT

The public was not involved in this matter, because the focus of this agenda item is to create an efficient system for the Department to comply with this law without imposing large additional burdens on the Commission. Of course, the public is always invited to comment in the original rule adoption process, and always has the right to petition to Commission to repeal or amend a rule for any reason, so no public participation right is eliminated by delegating review authority from the Commission to the Director rather than requiring the Commission to conduct these reviews during public meetings.

ISSUE 1

WHETHER TO DELEGATE FIVE YEAR RULE REVIEW AUTHORITY TO THE DIRECTOR ON THE COMMISSION'S BEHALF

ANALYSIS

The direct issue before the Commission is whether it chooses to conduct a review of all rules adopted within the preceding five years to satisfy the review required by ORS 181.405, or whether to delegate that authority to the Director. Because these reviews seem relatively straight forward,

staff believes the Commission's review of all these rules would not be justified given the large number of rules the Commission adopts, and the frequency with which the Commission revisits and amends rules within the five year time period. In other words, because most rules are revisited within five years in any case, the core purpose of this statute (to be sure agencies don't adopt rules and then forget about them even if the underlying basis for the rule has changed) is satisfied by the Commission's already frequent rulemaking amendments. In addition, if members of the public believe any of the Commission's rules no longer serve their intended purpose, they can petition to have the rule amended, without respect to any five year time period.

To provide the Commission with an opportunity to review the Director's analysis, staff proposes to include in the Delegation Order (Draft at Attachment 3) direction for the Director to submit a copy of his determination to the Commission for its review.

OPTIONS

1. Delegate authority to conduct five year administrative rule reviews to the Director, as proposed in Attachment 3.
2. No delegation, in which case the staff will return to the Commission with a list of the rules for which a review is required at the February, and subsequent meetings.

STAFF RECOMMENDATION

1. Option 1

DRAFT MOTION	I move to delegate to the Director the authority to review all administrative rules as required by ORS 183.405, on the Commission's behalf, and direct the Chair to sign the Delegation Order in Attachment 3.
EFFECTIVE DATE	When signed by the Chair