

Secretary of State
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TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form.

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10-19-15 2:29 PM
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I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on Upon filing, by the

<u>Department of Fish and Wildlife</u>	<u>635</u>
Agency and Division	Administrative Rules Chapter Number
<u>Michelle Tate</u>	<u>(503) 947-6044</u>
Rules Coordinator	Telephone
<u>4034 Fairview Industrial Dr. SE, Salem, OR 97302</u>	
Address	

To become effective 10/19/2015 through 04/15/2016.

RULE CAPTION

Amend Division 415 rules to refer specifically to Division 140 rules for sage-grouse mitigation issues.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

635-415-0025

SUSPEND:

Statutory Authority:

ORS 496.012, 496.112, 496.118, 496.138, 496.146, 498.500 & 498.502

Other Authority:

Statutes Implemented:

ORS 496.012, 496.112, 496.118, 496.138, 496.146, 498.500 & 498.502

RULE SUMMARY

This amendment in Division 415 directs sage-grouse specific mitigation issues to refer to Division 140, Greater Sage-Grouse Conservation Strategy for Oregon, and creates an exception for any energy facility that has submitted a preliminary application for site certificate pursuant to ORS 469.300 et seq. on or before the effective date of this rule.

Michelle Tate

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Rules Coordinator Name

Email Address

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
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Department of Fish and Wildlife

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Agency and Division

Administrative Rules Chapter Number

Amend Division 415 rules to refer specifically to Division 140 rules for sage-grouse mitigation issues.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Rules Relating to Division 415, Fish and Wildlife Habitat Mitigation Policy

Statutory Authority:

ORS 496.012, 496.112, 496.118, 496.138, 496.146, 498.500 & 498.502

Other Authority:

Statutes Implemented:

ORS 496.012, 496.112, 496.118, 496.138, 496.146, 498.500 & 498.502

Need for the Temporary Rule(s):

These temporary rules are needed to amend Division 415 rules to refer specifically back to Division 140 rules for impacts to sage-grouse habitat and to create an exception for any energy facility that has submitted a preliminary application for site certificate on or before the effective date of this rule.

Documents Relied Upon, and where they are available:

Draft rules are available from the division's rules coordinator, located at 4034 Fairview Industrial Drive, SE; Salem, Or 97302. Rules are also on the ODFW website at <http://www.dfw.state.or.us/OARs/index.asp>.

Justification of Temporary Rule(s):

On July 27, 2015, the Fish and Wildlife Commission adopted amendments to OAR Chapter 635, Division 140 pertaining to development impacts and mitigation in sage-grouse habitat. For impacts in sage-grouse habitat only, the Division 140 rules supersede the habitat mitigation policy rules in OAR Chapter 635, Division 415. There is currently no indication in Division 415 that those rules have been superseded in sage-grouse habitat. This temporary rule is to remedy that situation by providing guidance in Division 415 that in sage-grouse habitat the applicable rules are in Division 140.

In addition, the temporary rule includes an exception for any energy facility that has submitted a preliminary application for a site certificate pursuant to ORS 469.300 et seq. on or before the effective date of this temporary rule such that certain provisions of Division 140 do not apply.

Failure to act promptly will result in serious prejudice to businesses planning or proposing energy facility development because without this rule it may not be clear that Division 415 no longer applies in sage-grouse habitat. These businesses expend significant resources planning their proposed facilities and preparing applications, and those resources would be wasted if proposals are developed to comply with rules that are not longer applicable. Immediate action to provide clear guidance on the applicable rules and prevent wasted resources is in the public interest.

Michelle Tate

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