MEMORANDUM

To: Oregon Legislative Assembly
From: Oregon Department of Energy
Date: January 23, 2018
Re: 2017 Annual Agency Rulemaking Report

Pursuant to Oregon Laws 2016, chapter 44, section 1 (HB 4106), the Oregon Department of Energy is providing the following information about the agency’s rulemakings for the preceding 12-month period, January 1, 2017 through December 31, 2017. This report summarizes the number of permanent and temporary rules the agency adopted, amended, repealed or suspended in 2017. The agency conducts rulemaking across two OAR Chapters: Chapter 330 - Department of Energy and Chapter 345 - Energy Facility Siting Council.

Permanent Rulemakings, pursuant to ORS 183.335(2) and (3)

Chapter 330 - Department of Energy

<table>
<thead>
<tr>
<th>Number of Rulemakings:</th>
<th>8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Rules Adopted:</td>
<td>2</td>
</tr>
<tr>
<td>Number of Rules Amended:</td>
<td>57</td>
</tr>
<tr>
<td>Number of Rules Repealed:</td>
<td>12</td>
</tr>
<tr>
<td>Number of Rules Suspended:</td>
<td>0</td>
</tr>
</tbody>
</table>

1. Amending EIP Alternative Fuel Vehicle tax credit rules including amendment and program sunset provisions.

<table>
<thead>
<tr>
<th>Date Adopted: 01/25/17</th>
<th>Date Filed: 01/25/17</th>
<th>Date Effective: 01/25/17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adopted: 0</td>
<td>Amended: 11</td>
<td>Repealed: 0</td>
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</table>


2. Amending criminal records check and fitness determination rules.

<table>
<thead>
<tr>
<th>Date Adopted: 05/08/17</th>
<th>Date Filed: 05/08/17</th>
<th>Date Effective: 05/08/17</th>
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</thead>
<tbody>
<tr>
<td>Adopted: 0</td>
<td>Amended: 5</td>
<td>Repealed: 9</td>
</tr>
</tbody>
</table>


3. Amending and repealing public records request rules.

<table>
<thead>
<tr>
<th>Date Adopted: 05/24/17</th>
<th>Date Filed: 05/24/17</th>
<th>Date Effective: 05/24/17</th>
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</thead>
<tbody>
<tr>
<td>Adopted: 0</td>
<td>Amended: 1</td>
<td>Repealed: 1</td>
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<tr>
<td></td>
<td>Suspended: 0</td>
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</tbody>
</table>

Amended: 330-001-0025
Repeal: 330-001-0015

4. Update and clarify definitions and requirements for State Energy Efficient Design Program.

<table>
<thead>
<tr>
<th>Date Adopted: 08/15/17</th>
<th>Date Filed: 08/15/17</th>
<th>Date Effective: 08/15/17</th>
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<tbody>
<tr>
<td>Adopted: 0</td>
<td>Amended: 10</td>
<td>Repealed: 1</td>
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<tr>
<td></td>
<td>Suspended: 0</td>
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</tbody>
</table>

Repealed: 330-130-0025

5. Establish administrative procedures for implementing woody biomass energy technology as alternative to green energy technology.

<table>
<thead>
<tr>
<th>Date Adopted: 12/20/17</th>
<th>Date Filed: 12/20/17</th>
<th>Date Effective: 12/20/17</th>
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</thead>
<tbody>
<tr>
<td>Adopted: 2</td>
<td>Amended: 11</td>
<td>Repealed: 0</td>
</tr>
<tr>
<td></td>
<td>Suspended: 0</td>
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</tr>
</tbody>
</table>


6. Updates administrative requirements for energy efficiency standards for appliances and excludes certain small battery chargers.

<table>
<thead>
<tr>
<th>Date Adopted: 12/20/17</th>
<th>Date Filed: 12/20/17</th>
<th>Date Effective: 12/20/17</th>
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</thead>
<tbody>
<tr>
<td>Adopted: 0</td>
<td>Amended: 5</td>
<td>Repealed: 0</td>
</tr>
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<td></td>
<td>Suspended: 0</td>
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</tbody>
</table>


7. Implementing legislation regarding renewable energy certificates under the Renewable Portfolio Standard Program.

<table>
<thead>
<tr>
<th>Date Adopted: 12/20/17</th>
<th>Date Filed: 12/20/17</th>
<th>Date Effective: 12/20/17</th>
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</thead>
<tbody>
<tr>
<td>Adopted: 0</td>
<td>Amended: 3</td>
<td>Repealed: 1</td>
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<td></td>
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Repealed: 330-160-0015 (Temporary)

8. Updating State Home Oil Weatherization program rules.

<table>
<thead>
<tr>
<th>Date Adopted: 12/28/17</th>
<th>Date Filed: 12/28/17</th>
<th>Date Effective: 12/31/17</th>
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<tbody>
<tr>
<td>Adopted: 0</td>
<td>Amended: 11</td>
<td>Repealed: 0</td>
</tr>
<tr>
<td></td>
<td>Suspended: 0</td>
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</tbody>
</table>

Chapter 345 - Energy Facility Siting Council

| Number of Rulemakings: | 4 |
| Number of Rules Adopted: | 12 |
| Number of Rules Amended: | 21 |
| Number of Rules Repealed: | 1 |
| Number of Rules Suspended: | 0 |
| Number of Rules Renumbered: | 5 |

1. Incorporate ODFW sage-grouse rules and remove requirement to identify federally listed threatened and endangered species.
   - Date Adopted: 2/24/17  Date Filed: 3/8/17  Date Effective: 3/8/17
   - Adopted: 0  Amended: 3  Repealed: 0  Suspended: 0
   - Amended: 345-021-0010, 345-022-0000, 345-022-0060

2. Amend rules and rule provisions addressing structural, geologic, and seismic related issues and hazards.
   - Date Adopted: 9/22/17  Date Filed: 10/18/17  Date Effective: 10/18/17
   - Adopted: 0  Amended: 4  Repealed: 0  Suspended: 0

3. Amend the monetary offset rate for carbon dioxide (CO2) emissions and correct CO2 equivalency weights.
   - Date Adopted: 9/22/17  Date Filed: 10/23/17  Date Effective: 10/23/17
   - Adopted: 0  Amended: 2  Repealed: 0  Suspended: 0
   - Amended: 345-024-0580, 345-024-0620

4. Reorganization of Div. 27 and rewrite of rules governing requests for amendments to site certificates.
   - Date Adopted: 10/19/17  Date Filed: 10/24/17  Date Effective: 10/24/17
   - Adopted: 12  Amended: 12  Repealed: 1  Suspended: 0
   - Renumbered: 5
   - Repealed: 345-027-0070
   - Renumbered: 345-027-0000, 345-027-0020, 345-027-0023, 345-027-0028, 345-027-0030
Temporary Rulemakings, pursuant to ORS 183.335(5)

Chapter 330 – Department of Energy

Number of Temporary Rulemakings: 2

1. Amending SELP program to allow greater sharing of bond refunding savings with borrowers.
   Amended: 330-110-0042, Effective: 01/25/2017 through 07/23/2017

   **Statement of need:** The temporary rule was needed because the Oregon Department of Energy’s Small Scale Energy Loan Program (SELP) had an opportunity to achieve significant savings by refunding selected outstanding bonds. The temporary rule amendment allowed the department to share the bond refunding savings in excess of one-half with a borrower, if the department determined that circumstances exist under which sharing savings in excess of one-half with a borrower was appropriate. Without the rule, the department would have had to limit the sharing of bond refunding savings with borrowers to 50 percent or less. To facilitate the bond refunding, the department was asking borrowers to execute tax documents and make certain financial concessions. Under these conditions, the amount of savings deemed “equitable” for sharing with borrowers may exceed 50 percent and the department wanted to be able to share those savings above 50 percent with borrowers.

   **Agency findings:** The Oregon Department of Energy found that prompt action to adopt this rule was needed to participate in a bond sale scheduled by the Department of Treasury in February 2017. The department found that failure to promptly adopt this rule would result in the department being unable to share more than 50 percent of the bond refunding savings with borrowers, which would have jeopardized the department’s ability to move ahead with refunding bonds. The temporary rule allowed greater sharing of savings with borrowers, which was desirable since these borrowers were asked to execute tax documents and make certain financial concessions for the department to achieve the savings. This temporary rule amendment did not negatively impact borrowers.

   **Why the ORS 183.335(5) process was most appropriate for this rule:** When the opportunity to refund selected outstanding bonds was discovered, there was not enough time to perform a permanent rulemaking prior to the bond sale. The temporary rule amendment did not negatively impact borrowers or stakeholders of the program.

2. Adopting rules extending deadline for stranded thermal generation eligibility.
   Amended: 330-160-0015, Effective: 07/24/17 through 12/20/17

   **Statement of need:** The temporary rule was needed to extend the deadline from August 1, 2017, to January 1, 2018, for stakeholders to apply for thermal renewable energy certificates (T-RECs) associated with qualifying thermal generation that occurred between the effective date of Oregon Laws 2016, chapter 28 (SB 1547), March 8, 2016, and the date that relevant Oregon Department of Energy (ODOE) rules were effective, December 21, 2016. Additionally, the temporary rule removed the requirement that generator representatives must be registered for thermal generation by the deadline. Thermal
generation associated with this timeframe is defined as “stranded thermal generation” in OAR 330-160-0015(23).

As ODOE engaged with stakeholders during the 2016 rulemaking, the August 1, 2017 deadline was determined to allow a reasonable period of time for the Western Renewable Energy Generation Information System (WREGIS) to add functionality to its online tracking system to accommodate registration of facilities for thermal generation and for generator representatives to complete and submit an application to ODOE for certification as RPS-eligible. However, due to unforeseen delays related to technical issues, WREGIS was not able to register facilities for thermal energy generation until after August 1, 2017. Additionally, in providing technical assistance to generator representatives on their RPS certification applications, ODOE made refinements to both the application itself and the application process. Thus, it was neither realistic nor reasonable to expect thermal generation facilities to meet the August 1, 2017 deadline originally set by rule in December 2016.

**Agency findings:** Without this temporary rule, not a single facility would have qualified for T-RECs associated with stranded thermal generation, because WREGIS was not able to accommodate registration for thermal generation on or before August 1, 2017. Additionally, the extension to January 1, 2018 afforded more time for facility representatives to complete the complex process of applying to ODOE for RPS eligibility for thermal generation, which is the second requirement for claiming stranded thermal generation.

ODOE found that failure to promptly adopt this temporary rule would have meant that eligible biomass cogeneration facilities would not realize the economic benefit of ten months’ worth of T-RECs, and these credits would not be available for use in complying with the Oregon RPS. This represents a wasted economic benefit for biomass cogeneration facilities, utilities that must purchase RECs and T-RECs to comply with the Oregon RPS, and, potentially, Oregon utility ratepayers whose rates reflect the costs of doing business, which includes compliance with the RPS. The temporary rule amendment would not negatively impact stakeholders, but would allow for Oregon to fully realize the economic benefits of all its RPS-eligible renewable energy generation.

**Why the ORS 183.335(5) process was most appropriate for this rule:** ODOE and stakeholders did not realize that the August 1, 2017 deadline was not realistic until too little time remained to conduct a permanent rulemaking under ORS 183.335(2) and (3), thus the need to adopt a temporary rule under ORS 183.335(5) to extend the deadline in rule and allow time for a formal rulemaking process. ODOE did conduct a formal rulemaking process under ORS 183.335(2) and (3), holding a public hearing on November 29, 2017, and adopting identical amendments to OAR 330-160-0015 to permanently extend the deadline for eligibility for T-RECs associated with stranded thermal energy. The permanent rules were filed with the Oregon Secretary of State and became effective on December 20, 2017.

**Chapter 345 – Energy Facility Siting Council**

| Number of Temporary Rulemakings: | 0 |