
Docket Item:

Approve Permanent Rule Adoption 715-020-0005: Providing an appeals process for institutions denied approval in an interstate reciprocity agreement. ORS 350.075, SB 270, 2013.

- New Rule Temporary
 Amend Existing Rule Permanent
 Repeal Rule

Prompted by:

- State law changes
 Federal law changes
 Other

These changes go into effect on adoption.

Summary:

To comply with a new requirement of the State of Oregon's membership in the State Authorization Reciprocity Agreement (SARA), this new rule provides for an appeals process for institutions denied approval to participate. The proposed permanent rule directs the Commission to provide reasons for denial and establishes a timeline and process for submission of a request for review and appeal of a HECC decision to deny approval where there are specific errors in the HECC evaluation of the application. The proposed rule provides for a process comprised of an institutional hearing and peer review before an advisory council, with the final decision of approval to be made by the Commission.

The National Council for State Authorization Reciprocity Agreements (NC-SARA) revised policies in October 2019 to require member states to develop and implement an institutional appeals process by January 1, 2021 to hear and internally resolve any appeals from institutions for which they deny initial participation or renewal of participation in SARA. Under ORS 348.606, SB 218, 2015, HECC is the entity that reviews and determines approval of applications from schools for participation in SARA. ORS 350.075, SB 270, 2013, provides the HECC with the authority to administer interstate reciprocity agreements without further legislation. This rule establishes the required appeals process.

Material:

Rule Text

Staff Recommendation:

Staff recommends the Commission approve the attached permanent rule changes, to take effect up filing with the Secretary of State.

Higher Education Coordinating Commission

Office of Academic Policy and Authorization – Chapter 715

NEW RULE

State Authorization Reciprocity Agreement Approval, Denial, Appeal OAR 715-020-0005

(1) This rule applies to any school that participates in or seeks to participate in the State Authorization Reciprocity Agreement (SARA), an interstate reciprocity agreement for authorization of programs offered through distance education/online learning, offering instruction leading to or conferring degrees and credits from within Oregon to recipients located in states party to the agreement.

(2) The Commission shall review applications in the following manner:

(a) The Commission shall review initial and renewal applications for SARA participation submitted by Oregon institutions. To be approved or renewed, an institution must affirm and demonstrate that it meets the requirements for institutional participation as established by the national SARA governing body. The Commission shall make a determination on the application within 30 calendar days of receipt.

(b) Upon approval by the Commission, an institution shall remit all fees required and execute a Memorandum of Understanding agreement with the Commission. Such agreement is valid for three years from the date of execution by the Commission. An institution shall not engage in activity governed by SARA prior to the payment of fees and execution of such Memorandum.

(3) If the Commission recommends participation be denied, the Commission shall provide to the applicant institution a written reason for the recommendation of denial within 10 calendar days of the decision. The institution may re-apply to the Commission at any time after correcting any deficiencies, or may request, in writing, a review of the recommendation of denial following the process described in this rule. Any request for review by the applicant institution must be submitted to Commission no later than 30 calendar days after receipt of the recommendation of denial notice. If a review is not requested within the allotted time, the decision is final. The decision of Commission may be either a determination to uphold the denial of participation, or a determination to approve the application.

(4) Institutions may only request review of a decision of denial on the basis of errors in the Commission's review of the application that reflect one or both of the following:

(a) The determination that the applicant institution did not meet the requirements for approval was not supported by evidence, or

(b) The procedures used to reach the decision were inconsistent with SARA established policies or practices, and that these inconsistencies prejudiced the applicant institution.

(5) Institutions failing to meet eligibility criteria detailed in Section 3.1 of the National Council for State Authorization Reciprocity Agreement Policy Manual may not appeal a determination that such institution fails to meet such criteria.

(6) If after exhausting all efforts with the Commission, if an institution disagrees with the Commission's decision, the institution may appeal the decision to an advisory council convened by the Commission consisting of representatives of schools approved to participate in the interstate reciprocity agreement. The advisory council serves as a non-regulatory advisory body that will peer review the appeal documents and application submitted. The advisory council shall have representatives from the public university, community college, and private degree granting institution sectors.

(a) The appeal shall be submitted by the institution within 15 calendar days of the date the Commission's decision is received by the institution. The appeal shall be in writing and request a hearing to be held at a special meeting of the advisory council. The advisory council shall complete a review no later than 30 calendar days after the receipt of an appeal.

(b) The Commission shall consolidate all information pertaining to the relevant application and present it to a special meeting of the advisory council. The Commission may provide an extension of the renewal deadline if needed during the appeals process.

(c) After deliberation and conclusion of the review of the appeal, the advisory council will submit its recommendation to the Commission.

(d) In the event that an advisory council member is from an institution that has submitted an appeal, then that member shall be recused from the deliberation and recommendation process.

(e) The Commission may disagree with the recommendation of the advisory council. The decision of the Commission shall be final.

(f) Nothing in this section shall prohibit an institution from submitting a new application for approval or renewal. Such application shall be considered in accordance with this rule.

(7) An approved institution that is issued a recommendation of denial upon the submission of a renewal application may continue to operate as an approved institution until the end of the 30 day review window established in section (3) of this rule, or if the institution has requested review under such section, the expiration of the appeal window under section (6)(a) of this rule, or if the institution has appealed under such section, the receipt of a notice of denial of such appeal. A recommendation of denial issued by the Commission for which a review is not requested in section (3) of this rule, or if requested, for which an appeal is not filed under

section (6)(a) of this rule, shall be considered a denial effective on the date the relevant window to request such a review or appeal expires.

Statutory/Other Authority: ORS 350.075 & 348.606

Statutes/Other Implemented: ORS 350.075 & 348.606

History: HECC 1-2013, f. & cert. ef. 8-21-13