

From: [Gabriel D \[REDACTED\]](#)
To: [Admin.Rules](#)
Cc: Kenneth.Sanchagrin@opds.state.or.us
Subject: Comment on the proposed rule re delegation of authority
Date: Wednesday, August 5, 2026 1:52:48 PM
Attachments: [opdc public comment dated august 5, 2026, by d \[REDACTED\].pdf](#)

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Dear Ms. Smith:

Please find attached hereto my comment on the proposed rule on the delegation of authority. I planned to socialize my reservations and comment about this rule with a few commissioners before the next commission meeting. If you have any questions, please do not hesitate to reach me at [REDACTED] or via email at [gabe@d \[REDACTED\]](mailto:gabe@d [REDACTED]).

Thanks.
Gabe

August 5, 2026

BY ELECTRONIC DELIVERY

Dacia Smith
Rules Coordinator
Oregon Public Defense Commission
198 Commercial Street S.E., Suite 205
Salem, Oregon 97301

RE: Public Comment on the Proposed Rule about the Delegation of Authority

Dear Ms. Smith:

I submit this comment on the proposed rule governing delegation of rulemaking authority within the Oregon Public Defense Commission. The rule purports to authorize a delegation of rulemaking authority that the commission has no power to make. It should be withdrawn.

ORS 151.216(11) vests rulemaking authority in the commission. The grant runs to the commission as a body. The legislature's choice to vest the authority in the commission rather than in an officer is a substantive choice that establishes how rulemaking power conferred on this body is to be exercised. That is, collectively, through the procedures by which a public body acts with the procedural protections of public meetings law and the accountability of a body whose members are appointed and confirmed for that purpose.

ORS 183.325 permits an agency to delegate its rulemaking authority to an officer or employee “unless otherwise provided by law.” The specific statutory grant in ORS 151.216(11) is law that provides otherwise. The commission cannot delegate to any officer or employee what the legislature vested in the commission specifically as a body. The general permission in ORS 183.325 does not override the expressly granted power and authority, and no other provision in the commission’s enabling legislation authorized the further delegation that the proposed rule contemplated.

The proposed rule treats the executive director, the deputy director, and the chair of the commission as sources of delegated authority, providing that a member or employee is vested with rulemaking authority upon signature by one of those three individuals. None of the three holds rulemaking authority that could be delegated. The executive director and deputy director are agency officials whose statutory powers do not include rulemaking. *See* ORS 151.219. The chair is a single member of the commission and cannot exercise that body's authority unilaterally. The proposed rule purports to authorize delegations by individuals who do not hold the authority to delegate, of a power that the commission itself does not hold the power to pass along to any other person or agency.

The proposed rule, however, is not consistent with the principle staff has conceded. The rule’s text provides that a designated individual “is vested with the authority to *adopt*, amend, repeal, or suspend administrative rules [emphasis added].” Adoption is the exercise of rulemaking

[REDACTED]

Dacia Smith
August 5, 2026
Page 2

authority itself. Vesting that authority in a designated individual is the precise act the agency acknowledges it cannot perform. The staff memorandum dated June 11, 2026, characterizes the rule's purpose as the coordination of rulemaking activities and filing of adopted rules with the secretary of state. Those are ministerial functions that occur downstream of the exercise of rulemaking authority. The text of the rule is not limited to those functions. It vests adoption authority itself, which is the function staff concede cannot be delegated.

Staff may respond that the rule, having been adopted by the commission acting as a body, is itself the commission's exercise of delegation authority and that individual signature is merely the operational mechanism through which the body's delegation is carried into effect. That response does not save the rule. The commission cannot delegate to anyone what cannot be lawfully delegated in the first place. A rule purporting to authorize what the statute does not permit does not become a valid delegation by virtue of having been adopted as a rule.

I respectfully request that the proposed rule be withdrawn. Rulemaking under ORS 151.216(11) must be conducted by the commission as a body, exercising its authority through the procedures applicable to public bodies. If the commission wishes to streamline its rulemaking operations, the path is to use other deliberative instruments available to public bodies, such as consent agenda, standing committees with reporting obligations, or a rulemaking calendar, rather than to attempt a delegation that the statute does not authorize.

Very sincerely yours,

Gabe D 

cc: Dr. Kenneth Sanchagrin, Executive Director