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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

ELECT 5-2021
CHAPTER 165
SECRETARY OF STATE
ELECTIONS DIVISION

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SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Redistricting following the 2020 U.S. Census

EFFECTIVE DATE: 09/27/2021 THROUGH 02/09/2022

AGENCY APPROVED DATE: 08/11/2021

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Filed By:
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NEED FOR THE RULE(S):

These temporary rules are needed to respond to the ruling of the Oregon Supreme Court in *Kotek v. Fagan*, 367 Or. 803 (2021). In *Kotek*, the Oregon Supreme Court ordered the Oregon Legislature and the Secretary of State to follow a prescribed schedule for redistricting, in light of the delay of U.S. Census redistricting data. That schedule differs from the schedule prescribed in the Oregon Constitution and existing statutes and rules. The Secretary of State's existing rules differ from the court's ruling and must be changed. In addition, these rules provide additional details surrounding the conduct of the related public hearings.

JUSTIFICATION OF TEMPORARY FILING:

The Secretary of State finds that the failure to act promptly will result in serious prejudice to the public interest. The circumstances surrounding the delay in U.S. Census redistricting data are unprecedented and unlikely to recur. Similarly, the Oregon Supreme Court ruling and its prescribed schedule is limited to the present circumstances. The Secretary of State is temporarily amending rules to account for the delay and to comply with the court's order in this particular redistricting cycle.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Kotek v. Fagan, 367 Or. 803 (2021), available at the State of Oregon Law Library or from the agency; Oregon Revised Statutes, available online at www.oregonlegislature.gov or from the agency; and Oregon Administrative Rules, available online at sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx or from the agency.

RULES:

165-008-0000, 165-008-0010, 165-008-0020, 165-008-0030, 165-008-0040, 165-008-0050, 165-008-0060

AMEND: 165-008-0000

RULE TITLE: Purpose

RULE SUMMARY: The changes to this rule correct the statutory authority for the rule, changing ORS 188.015 to ORS

188.025 to account for legislative renumbering.

RULE TEXT:

(1) The purpose of OAR 165-008-0000 to 165-008-0060 is to provide by rule procedures in the event that the Secretary of State is required to prepare a reapportionment plan as provided in Section 6, Article IV of the Oregon Constitution.

(2) These rules establish timelines, hearing procedures and guidelines for evaluation of the constitutional and statutory criteria governing reapportionment.

STATUTORY/OTHER AUTHORITY: ORS 188.025

STATUTES/OTHER IMPLEMENTED: ORS 188.025

AMEND: 165-008-0010

RULE TITLE: Schedule if Legislature Does Not Complete Reapportionment by September 27

RULE SUMMARY: The temporary changes to this rule prescribe the schedule for state legislative redistricting in light of the delay of U.S. Census redistricting data, if the Legislative Assembly does not complete redistricting by September 27, 2021. These changes are needed to comply with the Oregon Supreme Court ruling in *Kotek v. Fagan*, 367 Or. 803 (2021).

RULE TEXT:

(1) Subsection (3) of Section 6, Article IV of the Oregon Constitution requires the Secretary of State to make the reapportionment if the legislature fails to enact a reapportionment by July 1 of the year following a federal census. In *Kotek v. Fagan*, 367 Or. 803 (2021), the Oregon Supreme Court prescribed a different schedule for 2021, which extends the legislature's deadline to September 27, 2021.

(2) If the legislature fails to enact a reapportionment by September 27, 2021, the Secretary of State will follow this schedule:

(a) October 4, 2021 — Publish a draft reapportionment plan; distribute to the public;

(b) October 5-13, 2021 — Accept written comments from the public;

(c) October 5-13, 2021 — Conduct one or more public hearings at locations to be announced;

(d) October 14-18, 2021 — Complete transcription of hearing or hearings. Review "evidence, views and argument" submitted by the public. Prepare reapportionment plan;

(e) October 18, 2021 — Submit reapportionment plan, together with transcript and evidence, to the Supreme Court.

STATUTORY/OTHER AUTHORITY: ORS 188.025, *Kotek v. Fagan*, 367 Or. 803 (2021)

STATUTES/OTHER IMPLEMENTED: ORS 188.025, *Kotek v. Fagan*, 367 Or. 803 (2021)

AMEND: 165-008-0020

RULE TITLE: Schedule if Legislature's Reapportionment Is Not Approved by the Supreme Court and the Secretary of State Is Directed to Draft a Reapportionment

RULE SUMMARY: The temporary changes to this rule prescribe the schedule for state legislative redistricting in light of the delay of U.S. Census redistricting data, if the Legislative Assembly's redistricting plan is not approved by Oregon Supreme Court and the Secretary of State is directed to draft a redistricting plan. These changes are needed to comply with the Oregon Supreme Court ruling in *Kotek v. Fagan*, 367 Or. 803 (2021).

RULE TEXT:

- (1) Subsection (2) of Section 6, Article IV of the Oregon Constitution requires the Secretary of State to draft a reapportionment when the Oregon Supreme Court determines that the reapportionment prepared by the legislature is deficient. The Supreme Court will "specify with particularity wherein the reapportionment fails to comply" and will direct the Secretary of State to draft a reapportionment which does comply with the constitution and applicable laws.
- (2) In this event, the Secretary of State will follow this schedule:
- (a) On or before December 6, 2021 — Supreme Court files order with Secretary of State directing preparation of a reapportionment;
 - (b) December 20, 2021 — Publish a corrected reapportionment plan; distribute to public;
 - (c) December 21, 2021-January 12, 2022 — Accept written comments from the public;
 - (d) December 21, 2021-January 12, 2022 — Conduct one or more public hearings at locations to be announced. The hearing or hearings shall be held in areas where the districts proposed by the legislature have been found insufficient by the Supreme Court. The Secretary of State may also, at the Secretary's discretion, hold hearings in other areas of the state if the Secretary determines additional hearings are needed to allow the public to participate;
 - (e) January 11-16, 2022 — Complete transcription of hearing or hearings. Review "evidence, views and argument" submitted by the public. Prepare reapportionment plan;
 - (f) January 17, 2022 — Submit corrected reapportionment plan, together with transcript and evidence, to the Supreme Court.

STATUTORY/OTHER AUTHORITY: ORS 188.025, *Kotek v. Fagan*, 367 Or. 803 (2021)

STATUTES/OTHER IMPLEMENTED: ORS 188.025, *Kotek v. Fagan*, 367 Or. 803 (2021)

AMEND: 165-008-0030

RULE TITLE: Conduct of Public Hearings

RULE SUMMARY: The temporary changes to this rule prescribe the process for conducting state legislative redistricting hearings, if the Secretary of State is required to draft a redistricting plan.

RULE TEXT:

If the Secretary of State is required to hold a hearing pursuant to either subsection (2) or (3) of Section 6, Article IV of the Oregon Constitution, the following shall apply:

- (1) The Secretary of State, or the Secretary's designee will be the presiding officer at the hearing.
- (2) Persons wishing to testify must provide their name and address at the beginning of the hearing.
- (3) The presiding officer shall manage the conduct of the hearing, including placing limits on duplicative testimony, so as to most efficiently and effectively allow the presentation of the maximum amount of information in the available time.

STATUTORY/OTHER AUTHORITY: ORS 188.025

STATUTES/OTHER IMPLEMENTED: ORS 188.025

AMEND: 165-008-0040

RULE TITLE: Submission of Evidence or Argument

RULE SUMMARY: The changes to this rule correct the statutory authority for the rule, changing ORS 188.015 to ORS 188.025 to account for legislative renumbering.

RULE TEXT:

(1) Persons may submit written evidence in the forms permitted by this section within the time permitted under OAR 165-008-0010 or 165-008-0020. If the written evidence is not submitted into the record at a hearing, it shall be delivered in person or mailed to and received by the office of the Secretary of State, Room 136, State Capitol, Salem, OR 97310. No evidence will be accepted after the last date specified in 165-008-0010 or 165-008-0020.

(2) In addition to evidentiary materials, any person may submit their views or argument concerning the apportionment within the same time limits provided for submission of evidence.

(3) Written evidence may consist of written text, charts, maps, photographs, audio and/or video tape records or similar materials. All evidence submitted will become part of the record and will not be returned.

STATUTORY/OTHER AUTHORITY: ORS 188.025

STATUTES/OTHER IMPLEMENTED: ORS 188.025

AMEND: 165-008-0050

RULE TITLE: Limits on Submission of Evidence, Views and Arguments

RULE SUMMARY: The changes to this rule correct a statutory reference in the text of the rule, changing ORS 186.010 to ORS 188.010, and correct the statutory authority for the rule, changing ORS 188.015 to ORS 188.025 to account for legislative renumbering.

RULE TEXT:

Persons testifying in person at a public hearing or through submission of written evidence, views and argument shall limit their comments to addressing the criteria for reapportionment in Section 6, Article IV of the Oregon Constitution, ORS 188.010 and other applicable law. The person should identify the particular district or districts of concern, discuss how the proposed reapportionment does or does not meet the criteria and describe, if possible, what reapportionment plan would better meet the criteria.

STATUTORY/OTHER AUTHORITY: ORS 188.025

STATUTES/OTHER IMPLEMENTED: ORS 188.025

AMEND: 165-008-0060

RULE TITLE: Criteria for Reapportionment

RULE SUMMARY: The changes to this rule correct the statutory authority for the rule, changing ORS 188.015 to ORS 188.025 to account for legislative renumbering.

RULE TEXT:

(1) In developing a reapportionment plan, the Secretary of State will comply with Section 6, Article IV of the Oregon Constitution, ORS 188.010 and any federal law which imposes requirements in addition to those imposed by the Oregon constitution and statutes.

(2) Compliance with the criteria of ORS 188.010(1) shall be to the maximum extent practicable. The following interpretations will be made of specific criteria:

(a) "Utilize existing geographic or political boundaries." When possible, districts will be drawn to utilize county lines and to maintain cities within a single district;

(b) "Not divide communities of common interest." Where urban neighborhoods, rural communities or other communities can be identified, an effort will be made to retain that community within a single district. Consideration will be given to market areas covered by local media;

(c) "Be connected by transportation links." Road connections of at least a county road should be available within the district from one area of the district to another. This does not apply to unpopulated areas of the district.

STATUTORY/OTHER AUTHORITY: ORS 188.025

STATUTES/OTHER IMPLEMENTED: ORS 188.025