From: INAHARA Jill
To: VANDEHEY Maggie
Subject: RE: prospective rulemaking
Date: Wednesday, September 17, 2014 3:52:54 PM

Yes, Maggie, I meant prospective! I'll ask Paul where it comes from. We have something in our rules now that says "regulated to the extent required by federal law" and I've been told that is prospective.

Thank you,
Jill

From: VANDEHEY Maggie
Sent: Wednesday, September 17, 2014 3:45 PM
To: INAHARA Jill
Subject: RE: prospective rulemaking

Howdy,

I think you mean "prospective" in the first sentence. ORS 183.337 has to do with adopting federal regulations by reference or verbatim. We cannot adopt federal regulations under ORS 183.337 before the federal government adopts the regulation. We may have statutory authority to adopt rules under 183.335 ahead of the fed's adoption that would be in addition to federal requirements. I encourage you to take with Paul about risks associated with doing this.

I think the concept of prospective rulemaking may have come about through case law, but I would have to research it.

Does this get close to answering your question?

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The real voyage of discovery consists not in seeking out new landscapes, but in having new eyes.
ATTRIB. MARCEL PROUST, 1871-1922

From: INAHARA Jill
Sent: Wednesday, September 17, 2014 2:51 PM
To: VANDEHEY Maggie
Subject: prospective rulemaking

Hi Maggie!

I haven't "talked" with you in a while so I thought I'd send this question to you. Where in the APA does it say we cannot do protective rulemaking? Is it ORS 183.337 which requires that we give notice of rulemaking? Or is there something that says we can't do prospective

rulemaking?

Thanks, Maggie!
Jill