

Internal Operations Manual

SUBJECT: Temporary Administrative Rules

NUMBER: 107-01-100

DIVISION: Operations Division
Office of Business Administration

EFFECTIVE DATE: 12-01-03

APPROVED



POLICY/PURPOSE: To establish the process to be used by all divisions within the Department of Administrative Services for filing Temporary Administrative Rules.

AUTHORITY: ORS 183.325 – 183-355
OAR 137-001-0070, 137-002-0010 – 137-002-0060
OAR 166-500-000 through 166-500-0055

APPLICABILITY: All Department of Administrative Services employees

ATTACHMENTS: Exhibit 1 – Rulemaking Timeline -- Flow Chart
Exhibit 2 – Official OAR Filing Forms
Exhibit 3 – Administrative Rule Review Summary Form
Exhibit 4 – Checklist for Temporary Rulemaking
Exhibit 5 – Formatting Guidelines for Secretary of State
Exhibit 6 – Formatting Guidelines for Legislative Counsel
Exhibit 7 – Digital Print Order Form

DEFINITIONS: **Administrative Rule** – Agency directives, standards, regulations, or statements of general applicability that implement, interpret, or prescribe law or policy or describe the agency's procedure or practice requirements. There are two kinds of rules: Temporary rules are effective for 180 days unless a shorter period is specified in the temporary rule ORS 183.341. Permanent Rules are in effect until they are repealed.

Agency Rules Coordinator – Appointed by the Director or Assistant Director of DAS. Appointment of Agency Rules Coordinators must be filed in writing with the Secretary of State Administrative Rules Unit. It is the Operation Division's responsibility to notify the Secretary of State of the appointment of new Agency Rules Coordinator(s) and to keep the appropriate forms updated. ORS 183.330(2) (Form ARC 910-1977).

The Agency Rules Coordinator assists the Division Coordinators with the rulemaking process, provides information to the general public and agency staff about the Department's rulemaking proceedings and the status of its rules. Is responsible for the filing of rules with the Secretary of State and Legislative Council and maintaining the permanent file of the agency's rules and the mailing list required by ORS 183.335(7).

Definitions – (Continued)

Division Rules Coordinator – Appointed by the Division Administrator. Maintains copies of all rules adopted by the Division, provides information to the public about the status of the rules and on all rulemaking actions of the Division, works with the Agency Rules Coordinator to coordinate rulemaking proceedings and file accurate and timely rules for their division. Maintains a division name and address list of interested parties and of Legislators as specified in ORS 183.335(14) for mailing the division's Notice of Rulemaking.

Notice of Proposed Rulemaking – The formal process for informing the public of intended rulemaking action. Notice is to be sent to:

- The name and addresses on the agency mailing list of interested individuals and organizations in accordance with ORS 183.335
- By publishing in the Oregon Bulletin
- Legislators specified in ORS 183.335(15). Permanent rule notices must be mailed at **least** 49 days before effective date of the rule
- The Associated Press
- The Capitol Building Press Room

Interested Parties Mailing List – A list of names and addresses of persons who have requested copies of the agency's notices of proposed rulemaking ORS 183.335(7). This list is to be maintained in an Excel database and updated before each mailing.

Oregon Bulletin – Monthly publication of all rulemaking actions that have taken place between printings of the annual edition of the Oregon Administrative Rules Compilation. Provides notice of intended rulemaking action and adopted or amended rule text.

Oregon Administrative Rules Compilation – Annual publication that contains the complete text of the Oregon Administrative Rules. The compilation is published annually in hard copy and updated monthly on-line at http://arcweb.sos.state.or.us/rules/OAR_default.html.

Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure under the Administrative Procedures Act – Reference book for Administrative Rule questions and procedures. Written by Hardy Myers, Attorney General, October 3, 2001. May be purchased from the Department of Justice. The manual is revised after each legislative session to update existing model and uniform rules for consistency with legislative changes.

GUIDELINES:

- I. The Director, Deputy Director, and Assistant Director will have Delegated Rulemaking Authority for the Agency. This authority is to be filed with the Secretary of State (*Form ARC 915-1997*).
- II. The Director or Assistant Director will appoint an Agency Rules Coordinator for the Agency. The appointment of an Agency Rule Coordinator must be filed in writing with the Secretary of State Administrative Rules Unit (*Form ARC 910-1997*).
- III. Each Division Administrator will appoint a Division Rules Coordinator to work with the Agency Rules Coordinator in filing the division's rules.
- IV. The Division Administrator will review all proposed rulemaking actions for their division and sign the *Administrative Rule Summary Form* (Exhibit 3) indicating that the Division approves the rule.
- V. Division Rule Coordinators will maintain a "Notice of Rulemaking " mailing list specific for their division. This list, with the names and addresses of the legislators as required by ORS 183.335(14), will be given to the Agency Rules Coordinator at the time the division rule is submitted for the filing process. **This list is to be formatted in an Excel database and updated for use before each rule filing.**
- VI. OAR Filing Forms –are available in the following formats:
 - Word and Adobe Acrobat .pdf file format from the following web site: http://arcweb.sos.state.or.us/rules/coordinator_resources.html
 - Electronic copy (MS Word) from the Agency Rules Coordinator
 - By copying samples shown in the "*Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the Administrative Procedures Act*" (AG's Law Manual Appendix C)
- VII. Administrative rules posted on a division's web site will be directly linked to the "Official Copy" of an OAR, which is maintained on the Secretary of State, Archives Division web site and not duplicated elsewhere. The address for that link is <<http://arcweb.sos.state.or.us>>.
- VIII. Agency rules are to use language that is clear and simple ORS 183.025. and use terms carefully and consistently. (*See Appendix B, AG Law Manual, Tips on Rule Writing*).
- IX. When the agency proposes to amend an existing rule, the agency shall set forth the rule in full with matter proposed to be deleted enclosed in brackets and proposed additions shown by bold face. ORS 183.341, ORS 183.335(2). Legislative Council requests that rules are submitted with the deletions shown in ***[italic type within brackets]*** and additions **boldfaced and underlined**, (pg. 41, Attorney General's Law Manual.) ***It is the preference of DAS that the italic deletions are also in bold and that the additions be underlined as shown above. This is to emphasize changes and further eliminate possible error in the deletion and addition of indicated changes.***

A. TEMPORARY RULES

1. Temporary rules are effective up to 180 calendar days starting with the day of rule filing. Rules may be made effective for a lesser number of days by indicating such on the Certificate and Order for Filing Temporary Administrative Rules.
 - a. Temporary rules may not be renewed ORS 183.335(6)(a).
 - b. If there is interest to make a temporary rule permanent, rulemaking must be started in time to complete the rulemaking process prior to the expiration of the temporary rule.
 - c. When the temporary rule expires, the original rule will again be in effect unless the agency takes permanent rulemaking action and files the new or revised permanent rule by the 180th day the temporary rule is in effect ORS 183.335(6)(b).
2. Under ORS 183.335(5), an agency may **temporarily** adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice or hearing that is practical **if they comply with specific temporary rulemaking requirements.** (*AG Law Manual page. 42C-46*).

However, ORS 183.355(2)(b) requires notice must be given to those who would receive notice under ORS 183.335(1) **after** the rule has been filed.

B. REQUIREMENTS FOR TEMPORARY RULE

1. **Drafting:** The rule is to be drafted the same as a permanent rule. (*See p. 25, Attorney General's Law Manual, Drafting Permanent Rules*).
2. **Statement of Need and Justification:** Agency provides a written statement that includes:
 - a. **Findings** by the agency that failure to act promptly will result in serious prejudice to the public interest or interests of the parties concerned ORS 183.335 (5)(a).
 - b. **The statement must make clear:**
 - Why immediate action is necessary.
 - Specific consequences that would result if the rulemaking action is not immediately taken.
 - Who would suffer these consequences (*General Public, specific individuals or groups*).
 - Why or how failure to immediately take rulemaking action would cause these consequences.
 - How the temporary rulemaking action will avoid or mitigate these consequences.

GUIDELINES (Continued)

- c. **Specific Reasons** why the agency's failure to act promptly will result in prejudice to those interests.
- d. **List** of the legal authority relied upon and bearing upon the adoption, amendment, or suspension of the rule, *ORS 183.335(5)(b)*.
- e. **Statement** about the need for the rule and how the rule is intended to meet the need.
- f. **List** of main documents, reports or studies (if any) prepared by or relied upon by the agency when preparing the rule, and where these documents are available for public inspection *ORS 183.335(5)(c)*.
- g. Certain agencies, a housing cost impact statement *ORS 183.335(5)(e)*.

3. **Fiscal Impact:** Is not required for a temporary rule filed by most agencies.

4. **Notice of Rulemaking:** Is not required before adopting a temporary rule *ORS 183.335(5)*, **However**, *ORS 183.355(2)(b)* requires that if notice is not given before a temporary rule is filed then it must be done after the filing.

Note: When replacing a temporary rule with a permanent rule, agencies should make sure that the Notice of Permanent Rulemaking expressly states that a temporary rule that has not expired is to be repealed.

C. PROCEDURE FOR FILING TEMPORARY RULES

Step Responsible Party Action

1. Division Drafts or re-writes rules using an advisory committee or soliciting public input. Advises and reviews with the DAS Assistant Director, any new rules, or substantial, controversial, or issue sensitive proposed rulemaking actions.

2. Division Rules Coordinator At least **SEVEN (7) working days** prior to the date the rule is to be filed, electronically submits the following documents to the Agency Rules Coordinator:

- One completed *Certificate and Order for Filing Temporary Administrative Rules* (Form ARC 940.1997).
- One completed *Statement of Need and Justification* (Form ARC 945-1997).

PROCEDURE (Continued)

Step Responsible Party Action

Division Rules
Coordinator
(Continued)

- One complete copy of the proposed rule text showing **additions in boldface and underscored**, and ***[deletions in bold italics and typed within square brackets]***.
- One electronic copy of the division-specific *Notice of Rulemaking Mailing List* (in accordance with agency notice rule). **This list must be formatted in an Excel database and the list must be updated before each filing.**
- One electronic copy of the name and address list of legislators requiring notice per ORS 183.335(14). **This list must be formatted in an Excel database and the list must be updated before each filing.**
- One completed– *Timeline Form* (Exhibit 7)
- One completed *Review Summary Form* (Exhibit 3).

NOTE: This form must be an original with Administrator’s signature and cannot be electronically submitted.

Discusses With Agency Rules Coordinator possible public interest in the rulemaking action, and the additional number of copies that may be needed. All requests for information received by the division will be forwarded to the Agency Rules coordinator for distribution.

**3. Agency Rules
 Coordinator**

Verifies that all documents are complete, accurate, and formatted as requested by the Secretary of State (Exhibit 6).

Confirms that the submitted rule text is consistent with the Secretary of State’s “Official Compilation. (Can be found on the Administrative Rule web site at <<http://arcweb.sos.state.or.us>>).

Checks timeline dates to ensure all dates meet state requirements.

When appropriate, will suggest to the division that the Division’s Attorney General, Department of Justice review all rules that have an affect on the public.

PROCEDURES FOR FILING TEMPORARY RULES (continued)

| <u>Step</u> | <u>Responsible Party</u> | <u>Procedure</u> |
|-------------|---------------------------|---|
| | | Prepares tracking sheet and routes rules for review and approval to the: <ul style="list-style-type: none">• Operations Division Administrator• Assistant Director of DAS for final review and signature |
| 4. | Assistant Director of DAS | Reviews and signs rulemaking documents authorizing that the rules are ready to file. |
| 5. | Agency Rules Coordinator | Collects all documents for filing and ensures they are complete and have been signed. Makes three (3) copies of all documents: one (1) for Legislative Council, one (1) for the Copy Center and one (1) for the temporary rule file. Prepares a 3.5 inch computer disk containing the text of the rule in both ASCII and the original word processing format. Computer disk is to be labeled with the: <ul style="list-style-type: none">• Name of the Agency• OAR Chapter Number• Division Number• Whether formatted for IBM or Macintosh• Name and version of word processing program used to create files <i>ORS 183-355 & ORS 183.360. (AG Law Manual pg C-16-17)</i> Prepares packet containing: <ul style="list-style-type: none">• One original signed Certificate and Order for Filing Temporary Rule• One copy of signed Certificate and Order for Filing Temporary Rule• One original statement of Need and Justification for Temporary Rule• One paper copy of adopted or amended final rule text• One computer disk containing the adopted or amended final rule text in both ASCII format and the original word processing format Attach to these documents a self addressed manila envelope and extra copy of the filing documents. These will be stamped with the Secretary of State verification stamp showing that the rules have been filed on specified date and returned. |

6. Agency Rules Coordinator Hand carries and files temporary rule packet with the Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street, and completes required form documenting date and time of delivery of the rule.

NOTE: The Secretary of State will publish the rule in the Oregon Bulletin if it is received by 4:30 on the 15 of the month. If the 15th is on a weekend or holiday, then the rule is due by 4:30 p.m. on the last working day before the weekend or holiday. If it is not received by the deadline, the rule will appear in the next month's issue of the Oregon Bulletin.

7. Agency Rules Coordinator Hand carries and files with Legislative Council Office, State Capitol S-101 the following documents:

- One copy of the signed Certificate and Order for Filing Temporary Administrative Rules
- One copy of the signed Statement of Need and Justification
- One paper copy of Rule Text showing additions and deletions

Attach to these documents a self addressed manila envelope and extra copy of the filing documents. These will be stamped with the Legislative Council verification stamp showing that the rules have been filed on specified date and returned.

8. Agency Rules Coordinator Prepares packet for distribution of rule to all interest parties ensuring that the appropriate legislator(s) are notified per ORS 183.335 (14) and interested parties, per the division's notice rule are included in the distribution. Copy Center packet will include:

- One completed *Digital Print Order* form (Exhibit 8)
- One copy of the signed *Certificate and Order for Filing Temporary Administrative Rules*
- One copy of the signed original *Statement of Need and Justification*
- One completed *Review Summary Form* (Exhibit 3.
- One 3.5 computer disk containing the name and address database of the Division and Agency Interested Parties and the list of Legislators that are to be notified per ORS 183.335 (14)
- One paper copy of rule text showing additions and deletions

PROCEDURES FOR FILING TEMPORARY RULES (continued)

Step Responsible Party Action

On the back side of the last page of documents, place a return address label in the upper left hand corner of page **after page has been folded in half, as it would be for mailing.**

Delivers the packet to Copy Center for printing, duplicating and distribution services.

9. Division Rules Coordinator Creates record of any data or views that the division receives concerning the temporary rule. Forwards all collected information to the Agency Rules Coordinator for insertion into the official permanent file.

10. Agency Rules Coordinator Maintains temporary file for OAR documents until stamped copy of the rule is received from Secretary of State and Legislative Council, then replaces rule copy with stamped documented copies from Secretary of State and Legislative Council. Files all backup including a paper copy of legislators and interested parties to whom the rule was mailed and related e-mails in an appropriately labeled official permanent file. Label is to state:

Admin. Rule 000-000-0000 (Date) (In Bold)
Rule Subject e.g. *Continuing Resolution for State Agency* (Regular type)

Notes the date that a permanent rule is to replace the temporary rule.

Contacts the responsible division three months prior to date the permanent rule is due to check status anticipated filing.

Notes the date that a permanent rule is to replace the temporary rule. Contacts the responsible division three months prior to date the permanent rule is due to check status anticipated filing.

Rulemaking Timeline For Temporary Rules

(Before the rule process is started, submit this form to the Agency Rules Coordinator for approval.)

TIMELINE TEMPORARY ADMINISTRATIVE RULES

(Before the rule process is started, submit this form to the Agency Rules Coordinator for approval.)

Division _____ Rule # _____

Notify Interested Parties by: _____

(If notice is not given before a Temporary Rule is filed, the notice must be given after the filing, but before the 15th of the month so it will be published in the Oregon Bulletin on the first day of the following month.)

Submit for Oregon Bulletin by: _____

(Must be in to the SOS by the 15th or the month or last workday preceding the 15th.)

Date Published in Oregon Bulletin: _____

(Usually the 1st of the month, at least 14 days prior to hearing date, 21 days prior to the effective date of the rule.)

Date of Hearing (If applicable): _____

(Not required for Temporary Rules but if one is held it must be at least 14 days from date published in Oregon Bulletin with 21 days notice of Hearing given to those on Interested Parties List)

Last Day for Public Comment: _____

(All rules must give last day Public Comment will be received. This date must be after the hearing is held. If no hearing, 21 days notice must be given to interested parties.)

Effective Date of Rule: _____

File Permanent Rules with Secretary of State: _____

File Permanent Rules with Legislative Counsel: _____

(Within 10 days of SOS Filing)

Date Temporary Rule Expires: _____

Rulemaking Timeline For Temporary Rules

(Before the rule process is started, submit this form to the Agency Rules Coordinator for approval.)

(180 days or less, if a shorter time is stated.)

Official OAR Filing Forms

| | |
|--------------|---|
| ARC 910-1997 | Appointment of Agency Rules Coordinator (<i>appoint.doc</i>) |
| ARC 915-1997 | Delegation of Rulemaking Authority (<i>Delegatn.doc</i>) |
| ARC 920-1997 | Notice of Proposed Rulemaking Hearing (<i>Hrnngnotc.doc</i>) |
| ARC 923-1997 | Notice of Proposed Rulemaking (<i>Permcert.doc</i>) |
| ARC 925-1997 | Statement of Need and Fiscal Impact (<i>Permneed.doc</i>) |
| ARC 930-1997 | Certificate and Order for Filing Permanent Administrative Rules (<i>Permnotc.doc</i>) |
| ARC 940-1997 | Certificate and Order for Filing Temporary Administrative Rules (<i>Tempcert.doc</i>) |
| ARC 945-1997 | Statement of Need and Justification (<i>Tempneed.doc</i>) |
| ARC 950-1997 | Notice of Periodic Review of Rules (<i>Periodrv.doc</i>) |

Administrative Rule Review Summary

TO: Division Rules Coordinator **Date**

FROM: Agency Rules Coordinator, DAS
Operations Division, Office of Business Administration

SUBJECT: Proposed Administrative Rule(s) -- Division Administrator's Review

The DAS process for filing administrative rules requires review and sign-off by the Division Administrator. This form must be initialed and dated by your Administrator and returned to the Agency Rules Coordinator prior to review by the Director's Office for official signature and filing. This form must also accompany notice filings. If your administrator feels these rules are controversial and require discussion with the Director's office prior to filing, please contact the, Assistant Director of DAS at (503) 378-2627.

Please provide the information requested below and return this form within four working days prior to the filing deadline to the DAS Rules Coordinator, 155 Cottage Street NE U90, Salem, OR 97301-3972. Please accompany this form with a copy of the proposed rule text (showing additions and deletions), and the required filing forms. If you have any questions, please do not hesitate to call me at (503) 378-2349 x 325.

| | |
|---|---|
| Division Rules Coordinator (Name and telephone number) | Name: Phone: |
| Agency Number (107 + three digits identifying division/program) PCA (for printing and distribution of notice) | Agency Number: <u>107</u> ___ PCA: _____ |
| Subject Matter Expert (person able to answer high-level questions regarding rule specifics (name and telephone number) | Name: Phone: |
| Rule Summary: | |
| Proposed Effective Date: | |
| Rulemaking Action: List all rule numbers affected | OAR: _____ - _____ - _____ |
| Administrator Review and Approval: <input type="checkbox"/> Notice <input type="checkbox"/> Adopt <input type="checkbox"/> Amend <input type="checkbox"/> Repeal | |
| _____ Signature | _____ Date |
| Final Approval by Assistant Director, DAS: | |
| _____ Signature | _____ Date |

Checklist for Temporary Rulemaking

(For Emergency use only)

- Consider whether appropriate to appoint advisory committee or use other means to obtain public input.
- Prepare:
 - a. Rule;
 - b. Statement of findings that prompt action needed to avoid serious prejudice, with specific reasons;
 - c. Citation to statutory authority and statute(s) implemented;
 - d. Statement of need;
 - e. Documents relied upon;
 - f. Housing cost impact statement (certain agencies only).
- Consider whether practicable to provide abbreviated notice and to hold hearing.
- Adopt, amend, or suspend rule, after considering fully all written or oral submissions, if any.
- Notify affected persons.
- File with Administrative Rules Unit, Archives Division, Secretary of State a copy of adopted or amended rule, along with original and copy of Certificate and Order for Filing Temporary Administrative Rules, a computer disk with rule in ASCII and original format, and two copies of statements listed above.
- File copy of adopted or amended rule with Legislative Counsel within 10 days of filing with Secretary of State.

Review rule and determine whether permanent adoption, amendment, or repeal is necessary before temporary rule expires (180 days from effective date).

Formatting Guidelines for Secretary of State Filing

Pages shall be numbered consecutively.

Rule text shall contain only final wording.

Rules shall be typed in 10 or 12 point size.

Typing shall be from margin to margin, not in column form.

Single spaces shall be used between sentences, words, or any place multiple spaces might be used.

Division titles shall be centered, boldface and use all uppercase letters.

Division subtitles shall be centered, boldface and use initial capitalization only.

Rule numbers and titles shall be flush left and boldface.

Text has one level of indentation throughout. Hanging paragraphs should not be used.

The text of each rule shall be followed by: the specific statutory authority for that rule and the specific statute(s) being implemented by that rule.

One extra line space (hard return) shall be inserted only in the following locations in the text: before and after centered titles after the text of each rule.

Text shall appear in consecutive order by rule number.

Computer Disk

One 3.5 inch, double-sided, high-density computer disk which contains two electronic copies of the text of each rule.

The affected rules only in each OAR division shall be in two separate files on the computer disk.

The text of each rule shall be saved in both ASCII and the original text format.

Filenames for each ASCII formatted file shall begin with the OAR three digit chapter number, followed by a hyphen (-), followed by the three digit division number, followed by a period (.); followed by the lower case letters "txt." Example: 125-010.txt. Filenames for each file saved in the original word processing format shall be the same as the ASCII formatted files, except contain a different file name suffix. The file name suffix shall be the suffix customarily used by the original word processing program or designated by the agency. Example: 125-010.doc or 125-010-wp.

The outside of each disk shall be labeled with: Agency name; OAR Chapter number; Division number(s); whether formatted for IBM or Macintosh; and the name and version of word processing program used to create files. *Example of Disk Label:*

Department of Administrative Services
OAR Chapter 125
Division number 030
IBM Formatted, Microsoft Word

Formatting Guidelines for Legislative Counsel Filing

Rule text shall contain text showing additions (boldface and underscored) and deletions (boldfaced and typed within square [] brackets).

Rules shall be typed in 10 or 12-point size.

Typing shall be from margin to margin, not in column form.

Single spaces shall be used between sentences, words, or any place multiple spaces might be used.

Division titles shall be centered, boldface and use all uppercase letter.

Division subtitles shall be centered, boldface and use initial capitalization only.

Rule numbers and titles shall be flush left and boldface.

Text has one level of indentation throughout. Hanging paragraphs should not be used.

The text of each rule shall be followed by: the specific statutory authority for that rule and the specific statute(s) being implemented by that rule.

One extra line space (hard return) shall be inserted only in the following locations in the text: before and after centered titles after the text of each rule.

Text shall appear in consecutive order by rule number.

Legislative Counsel does not require electronic versions.

DIGITAL PRINT ORDER FORM

Hard copies of this policy will have a paper copy of the Digital Print Order Form, Exhibit 7. However,

The Digital Print Order Form is not an electronic form and cannot be included in the web site policy.

The form may be obtained from:

Publishing and Distribution Services, Telephone 503-378-3397x301

Or

From your Division Administrative Assistant