

Adopting and Amending Administrative Rules

Introduction

The Administrative Procedures Act (APA), ORS Chapter 183, establishes requirements for rulemaking:

The Legislative Assembly finds and declares that it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and the drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt, amend or repeal a rule. The agency may appoint an advisory committee that will represent the interests of persons likely to be affected by the rule, or use any other means of obtaining public views that will assist the agency in drafting the rule.

For the purposes of the APA, any policy affecting members of the public (includes SOU students; excludes employees) must be promulgated through administrative rule. The executive assistant for the vice president of finance and administration is registered with the Secretary of State as the rule coordinator for Southern Oregon University and prepares the following after the administrative rule text is in final form:

- Statement of Need
- Fiscal Impact Statement
- Notice of Rule Making
- Certificate and Order of Filing

Prior to amending an existing rule, contact a budget analyst in Business Services for a copy of the most recent edition of the rule and for assistance determining the timeline for the adoption or amendment process.

General Timeline

49 days prior to effective date of rule	If proposed adoption, amendment, or repeal results from legislation effective date of rule passed within two years before notice is given, notice shall be given to the legislator who introduced the bill that was enacted into law and to the chair or cochair of all committees that reported the bill out, except for those committees whose sole action on the bill was referral to another committee. If the proposed adoption, amendment, or repeal does not result from legislation that was passed within two years before notice is given, notice shall be given to the chair or cochair of any interim or session committee with authority over the subject matter of the rule.
Last day of month	Mail Notice and Statement of Need to interested parties.

1 st of next month	Notice printed in Secretary of State's Bulletin.
14th or later	Hearing held for interested parties to submit testimony.
21 st or later	File Certificate and Order with Secretary of State; rule is effective upon filing.

Preparing the Forms

Submit the following to the executive assistant:

1. One copy of rule showing all changes; one copy of rule with changes removed (preparation instructions follow).
2. Short summary paragraph of amendments for the Notice of Proposed Rulemaking form.
Example: *By action of the State Board of Higher Education, certain degree programs in Nursing have been transferred from SOU to the Oregon Health Sciences University. This amendment deletes references to nursing students in the University's administrative rule stating its requirements for student liability insurance. This amendment proposes to refer generically to health-related academic coursework and clarify in what publications a student will find references to specific courses that are subject to student liability insurance requirements and the specific charges.*
3. Brief paragraph describing the need for the amendment/adoption for the Statement of Need form.
Example: *By action of the State Board of Higher Education, certain degree programs in Nursing have been transferred from SOU to the Oregon Health Sciences University. Because of the transfer, the University's insurance no longer covers these students. This requires amendment of the SOU administrative rule regarding requirements for student liability insurance to delete specific references to the nursing program students.*
4. List of documents (studies, reports, statutes, other rules, etc.,) used in reviewing the rule for amendment or for writing an entirely new rule.
5. Brief paragraph describing the fiscal impact on persons affected by the rule for the Fiscal Impact Statement.
Example: *Costs to the remaining students in health-related professions, physical therapy, and occupational therapy at SOU remain unchanged by the amendment. Charges for insurance remain based on actual charges required by insurance carriers. Nursing students will not be subject to any liability insurance requirements adopted by OHSU.*
6. Titles of members of the advisory committee(s) that reviewed the rule and the titles of individuals who participated in the review.
Example: *The University used an internal review group consisting of the Committee, the director of _____, and the vice president of _____.*

Preparing the Rule Text

- Use the last version filed with the Secretary of State ☐ call Administrative Services at 2-8550 for the copy.
- Every change to the rule must be noted, even seemingly insignificant changes to punctuation and spacing.
- One-inch margin on all four sides of the page.
- Number the pages.
- Single space the text; double space between numbered rules.
- Use only one space after periods and numbers.
- All text is flush with the left margin. Do not indent paragraphs, including subparagraphs. Every paragraph must start with a number or letter.
- Use the following outline structure: (1), (a), (A), (i).
- The number (573-XX-XXXX) is a rule number. Section headings immediately follow the rule number and must be in initial caps and bold. At the end of each section, cite all federal and/or state statutes, regulations, and rules that this particular rule implements.
- Additions must be underlined and in bold. If the rule is entirely new, underlining and bold face type is not required.
- Deletions must be put in brackets [].
- Numbering must be sequential. If a new numbered paragraph is inserted, all numbers following in that section must be changed. Each number deleted should be in brackets and the new number underlined and bolded.
- Number sections in increments of 10 (for example: 573-50-0010, 0020). It gives greater flexibility for inserting new sections during subsequent revisions.

Language

The following is adapted from the Oregon Attorney General's Administrative Law Manual:

1. Avoid ambiguity.

- Make clear what a modifier is modifying, and to what a reference word is referring. Does "fall flower arranging class" mean a class for arranging fall flowers or a class for arranging flowers that is held in the fall?
- Be careful when using "and" and "or." Although "and" connotes togetherness and "or" suggests take your pick, it is not always that clear. Does "charitable and educational institutions" mean institutions that are both charitable and educational, or does it mean those that are either charitable or educational? Never use "and/or."

2. Use active voice. The active voice clarifies the doers of the action. "The claimant must inform the department" is clearer than "it is necessary that the department be informed."

3. Make the actor or doer of the action the subject of the sentence. Although a "thing" may be a legal subject, a thing does not have legal responsibility and one cannot direct a command to it. "Abandoned storage tanks must be decommissioned" does not tell us who is responsible for decommissioning.

4. Use the third person (e.g., "the applicant") rather than "you" to identify the actor.

5. Write in the present tense. Say "Each person must ..." rather than "Each person is to"

6. Beware the use of "shall."

- Use "shall" or "must" to impose a duty; use "may" to permit or authorize. Avoid using "will," "would" or "should" because those words do not indicate clearly whether an action is required or merely authorized.
- Say "The term 'person' means. ..." rather than "The term 'person' shall mean."
- Never use "shall" to mean a future event because that use conflicts with the common legal use of the word as mandatory.

Example: Compare "Any person who shall resign from the service after he shall have served ten or more years and who at such time shall be less than 55 years of age shall have a right to receive annuity from and after the date when he shall attain an age of 55..." with "Any person who resigns from the service after having served ten or more years and who at such time is less than 55 years of age has a right to receive annuity from and after the date when he attains an age of 55."

7. Try to avoid stating the subject negatively and the verb positively.

Example: Compare "No person may fish without a license" with "A person may not fish without a license."

8. Avoid surplus words.

Use	Do Not Use
determine	make a determination
because	for the reason that
to	in order to
if	in the event that
after	subsequent to
while	during the time that
before	prior to
adjust	make an adjustment

9. Avoid redundant phrases such as:

- | | |
|-----------------------|------------------|
| made and entered into | true and correct |
| full and complete | unless and until |
| mutually agree | narrow in width |
| few in number | resultant effect |
| close proximity | true facts |

10. Use terms consistently within the rule and with the underlying statute and related rules.

11. Use gender neutral language.

- ORS 174.115 states: "It shall be the policy of the State of Oregon that all statutes, rules and orders enacted, adopted or amended after October 3, 1979, be written in sex-neutral terms unless it is necessary for the purpose of the statute, rule or order that it be expressed in terms of a particular gender."

- Sometimes this is difficult and may take effort and creativity. But try. Say “reasonable person” instead of “reasonable man”; “worker” instead of “workman”; “supervisor” instead of “foreman”; “reporter” or “journalist” instead of “newsman.”

12. KIS (Keep It Simple)

- Avoid using jargon or complex phrases.
- Use familiar words when possible.
- Use short sentences.

13. Do not duplicate statutory language, unless appropriate. Then, be careful that the rule does not misstate the statutory requirement, and be sure to update the rules whenever the statute is amended.