



# ISSUE BRIEF

Legislative Policy, Research, and Committee Services • 453 State Capitol • Salem, OR 97310-4002 • 503-986-1813

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## Legislative Review of Administrative Rule Adoption, Amendment, or Repeal

**Background:** State agencies are required to submit to Legislative Counsel copies of administrative rules that have been certified by the Secretary of State within 10 days of filing the adopted rules. Statute provides that Legislative Counsel may review proposed or adopted rules on its own initiative, upon the written request of any person affected by the rule, or if directed to do so by the Legislative Counsel Committee or by any member of the Legislative Assembly. The Legislative Counsel Committee has given the Office of Legislative Counsel a standing order to review all administrative rules. Additionally, if a member of the Legislative Assembly or a person affected by an adopted administrative rule (state or federal) feel the rule is duplicative or in conflict with another rule, the aggrieved may request Legislative Counsel prepare a report on the potential duplication or conflict. Report requests must be in writing and contain two copies of the rules in question (ORS 183.720(7)).

**What Changes Have Been Made to the Administrative Rule Notice and Review Process?** HB 3035 (1999), adds notice and review requirements to the notice and review process for administrative rules. State agencies are now required to give notice of a proposed administrative rule adoption, amendment, or repeal to the appropriate legislative committee chairs, committee members, and sponsors (of the bill to which the rule is applicable) at least 49 days before the effective date of the rule adoption or change. Committees receiving notice are required to review the proposed rule change upon the request of a legislator or a person who would be affected by the proposal, and to submit comments to the agency proposing the rule adoption or change. Agencies proposing administrative rule adoption, amendment, or change must maintain a record of committee and/or interested party comments.

**What are the Notice Timelines?** Prior to adoption, amendment, or repeal of any administrative rule, the state agency proposing adoption or change shall give notice of its intended action:

1. At least 21 days before the effective date of the action, in the Oregon Bulletin;
2. At least 28 days before the effective date of the action, to persons on the agency's mailing list that have written to the agency, requesting notice;
3. At least 49 days before the effective date of the action, if the proposed rule is a result of legislation passed within two years of when the rule notice is required, notice is required to be given to the legislator that introduced the associated bill and to the chair or co-chairs of all committees that reported the bill out (except for committees only referring the bill to another committee). If the proposed rule did not result from legislation passed within the two year time-frame, notice is required to be given to the chair or co-chairs of any interim or session committee with authority over the subject matter of the rule;

4. If notice cannot be given as described above, notice shall be given to the Speaker of the House of Representatives and President of the Senate at least 49 days prior to the effective date of the rule.

**Which Legislative Body Reviews Administrative Rules?** Administrative Rules are reviewed by Legislative Counsel as described in the *Background* section of this brief. Additionally, upon the request of a Legislative Assembly member or a person who would be affected by the a proposed rule adoption or change, the committee with jurisdiction over the subject matter of the administrative rule is required to review the proposed rule for compliance with original legislative intent. Comments from the committee are submitted to, and maintained by, the applicable agency.

**Do All Proposed Administrative Rule Adoptions, Amendments, or Repeals Require Legislative Notice and/or Review?** A state agency may adopt, amend, or suspend a rule without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares:

1. A statement of findings that identify failure to act promptly will result in serious prejudice to the public interest or the interest of parties concerned. The statement must include specific reasons for finding of prejudice;
2. A citation of statutory or other legal authority relied upon and bearing upon promulgation of the rule;
3. A statement of the need for the rule and a statement of how the rule is intended to meet the need;
4. A list of principal documents, reports or studies, if any, prepared by or relied upon during the agency's consideration of the rule, and a statement of the location at which those documents can be accessed;
5. A housing cost impact statement, if applicable.

**Are Rules Adopted Without Prior Notice Permanent?** Rules adopted, amended, or suspended as described above are *temporary rules*. Temporary rules are effective for a maximum of 180 days. Temporary rules can be made permanent by following the procedures required for permanent rule-making. Permanent rules temporarily suspended regain effectiveness upon expiration of the temporary rule time period.

**What are the Consequences of Non-Compliance with the Administrative Rule Notice and Review Process?** No rule is valid unless adopted in substantial compliance with notice and review requirements in place on the date that the rule is adopted. In addition to all other requirements, no rule adopted after October 3, 1979 is valid unless submitted to Legislative Counsel within 10 days after the agency files a certified copy of the rule with the Secretary of State. An agency may correct its failure to comply with notice requirements by an amended filing, so long as the non-compliance did not substantially prejudice the interests of persons affected by the rule. An amended filing does not authorize correction of failure to prepare a required fiscal impact statement.