



LPRO

LEGISLATIVE POLICY
AND RESEARCH OFFICE

Agency Rulemaking and Legislative Oversight

PREPARED FOR: House Committee on Rules


DATE: February 12, 2025

BY: Tyler Larson, Research Analyst

Agency Rulemaking and Legislative Oversight

Going to review:

- Agency rulemaking authority and procedures
- Legislative oversight of agency rulemaking

DEXTER A. JOHNSON LEGISLATIVE COUNSEL	STATE CAPITOL BUILDING 900 COURT ST NE S101 SALEM, OREGON 97301-4065 (503) 986-1243 FAX: (503) 373-1043
 STATE OF OREGON Legislative Counsel Committee	
ARR Number: 1201	
April 13, 2010 Administrative Rule Review	
WRITTEN FINDINGS OF NEGATIVE DETERMINATION (Pursuant to ORS 183.720 (3))	
State Agency:	Department of Human Services—Children, Adults and Families Division
Rules:	OAR 413-015-0420
The above temporary rule was filed with the Secretary of State on February 12, 2010, to become effective February 12, 2010, through August 11, 2010.	
Pursuant to ORS 183.720 (3), we have made the following determination:	
The rule raises constitutional issues, for the reasons set forth below.	



Agency Rulemaking

Agency rulemaking is governed by [ORS 183.310 to 183.690](#), the Administrative Procedures Act (APA). For the purposes of the APA:

- “Agency” means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches.
- “Rule” means any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency.



Agency Rulemaking

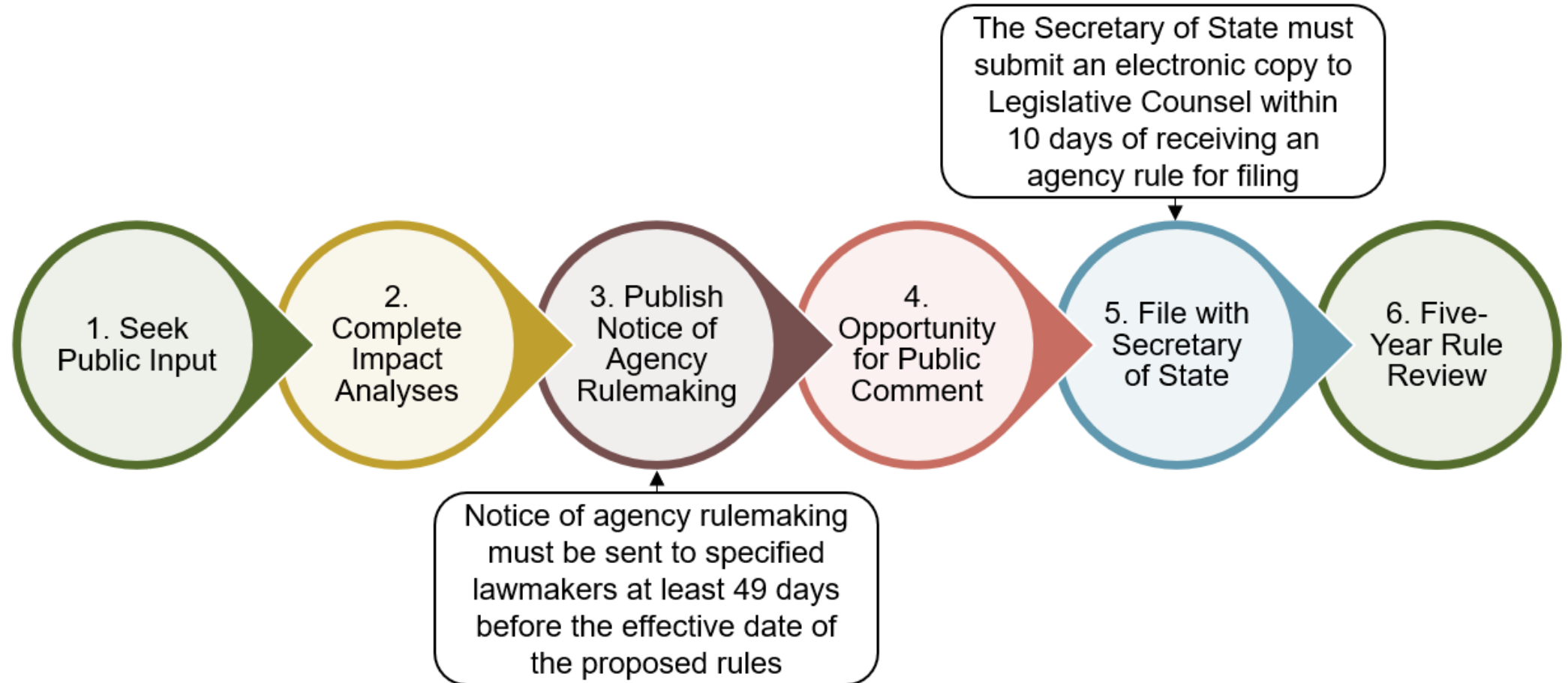
Agency rules must be authorized by **constitutional** or **statutory** authority.

The Court of Appeals may determine the validity of any rule and must declare a rule invalid if it finds the rule:

- violates constitutional provisions,
- exceeds the statutory authority of the agency, or
- was adopted without compliance with applicable rulemaking procedures.



Permanent Rulemaking Procedures



Permanent Rulemaking Procedures

1. Seek Public Input

“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 in 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 a rule.”

ORS 183.333(1)

2. Complete Impact Analyses

HOUSING IMPACT STATEMENT:

Description of proposed change: Adoption of the 2023 Oregon Residential Specialty Code

Description of the need for, and objectives of the rule:

Oregon Revised Statute 455.610 requires the division, with the approval of the board, to adopt, and amend as necessary, a low-rise residential dwelling code “that contains all the requirements, including structural design provisions, related to the construction of residential dwellings three stories or fewer above grade.” The low-rise code is known as the Oregon Residential Specialty Code (ORSC) and is comprised of structural, mechanical, plumbing, electrical, and low-rise apartment provisions.

Cost analysis for the 1,200 square foot home, using similar baseline home systems from the 2021 ORSC, show the estimated weighted cost increase from the Chapter 11 baseline revisions is \$1,167. Weighted annual energy savings are estimated at just over \$117 per year. The estimated simple payback is 10 years, and like for the larger home, would provide a net positive cash flow.

Estimated administrative construction or other costs increase or savings: The proposed rules do not impose any additional administrative requirements.


Land costs increase or savings: None.

Other costs increase or savings: None.



Permanent Rulemaking Procedures

3. Publish Notice of Agency Rulemaking

OFFICE OF THE SECRETARY OF STATE TOBIAS READ SECRETARY OF STATE MICHAEL KAPLAN DEPUTY SECRETARY OF STATE		ARCHIVES DIVISION STEPHANIE CLARK DIRECTOR 800 SUMMER STREET NE SALEM, OR 97310 503-373-0701
NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT		FILED 01/31/2025 10:50 PM ARCHIVES DIVISION SECRETARY OF STATE
CHAPTER 410 OREGON HEALTH AUTHORITY HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS		
FILING CAPTION: Enrollment Timeframes - Members Will be Enrolled Within Three Days		
LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/21/2025 5:00 PM		
<i>The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.</i>		
<i>A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later.</i>		
<i>If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.</i>		
CONTACT: Martha Martinez-Camacho 503-559-0830 hsd.rules@oha.oregon.gov	500 Summer Street NE Salem, OR 97301	Filed By: Martha Martinez-Camacho Rules Coordinator
NEED FOR THE RULE(S)		
As of January 1, 2024 OHA implemented a Medicaid Management Information System (MMIS) change request that began enrolling new and transitioning Oregon Health Plan (OHP) members into their Coordinated Care Organization (CCO) within 3-5 days, rather than the current 5-11 days.		
OHA was able to complete and monitor system changes and found that CCOs are enrolling members within three days.		

Does the rulemaking result from legislation passed within two years of the date that notice is given?

YES

NO

Notice of rulemaking is given to...

...the **lawmaker who introduced the enabling measure and the chair or cochair of all committees that reported the measure out**, except if the action was solely to move the measure to another committee.

...the **chair or cochair of any interim or session committee with authority over the subject matter of the rule**. If notice cannot be given to a committee, it is given to the **presiding officers**.



Permanent Rulemaking Procedures

4. Opportunity for Public Comment

“(a) Upon the request of a member of the Legislative Assembly or of a person who would be affected by a proposed adoption, amendment or repeal, the committees receiving notice [of rulemaking] shall review the proposed adoption, amendment or repeal for compliance with the legislation from which the proposed adoption, amendment or repeal results.

“(b) The committees shall submit their comments on the proposed adoption, amendment or repeal to the agency proposing the adoption, amendment or repeal.”


ORS 183.335(16)



Permanent Rulemaking Procedures

5: File with Secretary of State

6: Five-Year Rule Review

<p>OFFICE OF THE SECRETARY OF STATE TOBIAS READ SECRETARY OF STATE</p> <p>MICHAEL KAPLAN DEPUTY SECRETARY OF STATE</p>		<p>ARCHIVES DIVISION STEPHANIE CLARK DIRECTOR</p> <p>800 SUMMER STREET NE SALEM, OR 97310 503-373-0701</p>			
<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="border: 1px solid black; padding: 5px; width: 60%;"> <p style="text-align: center; margin: 0;">PERMANENT ADMINISTRATIVE ORDER</p> <p style="margin: 5px 0;">LOTT 3-2025 CHAPTER 177 OREGON STATE LOTTERY</p> </div> <div style="border: 1px solid black; padding: 5px; width: 35%; text-align: center;"> <p style="margin: 0;">FILED</p> <p style="font-size: small; margin: 0;">01/31/2025 3:35 PM ARCHIVES DIVISION SECRETARY OF STATE & LEGISLATIVE COUNSEL</p> </div> </div>					
<p>FILING CAPTION: Updating requirements for Video Lottery retailers relating to the constitutional prohibition on casinos</p> <p>EFFECTIVE DATE: 02/01/2025</p> <p>AGENCY APPROVED DATE: 01/31/2025</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">CONTACT: Kris Skaro 503-540-1181 Kris.Skaro@lottery.oregon.gov</td> <td style="width: 33%; text-align: center;">500 Airport Rd SE Salem, OR 97301</td> <td style="width: 33%;">Filed By: Kris Skaro Rules Coordinator</td> </tr> </table> <p>RULES: 177-040-0050, 177-040-0061</p> <p>AMEND: 177-040-0050</p> <p>RULE TITLE: Retailer Duties</p> <p>NOTICE FILED DATE: 11/13/2024</p> <p>RULE SUMMARY: The Lottery is amending OAR 177-040-0050 about retailer duties. The changes impose basic food service requirements on two types of Video Lottery retailers that are most at risk for violating Lottery's casino prohibition rule: limited-menu retailers (LMRs) and café/small eateries (CSEs) as defined in the rule. Statutory references are also updated.</p>			CONTACT: Kris Skaro 503-540-1181 Kris.Skaro@lottery.oregon.gov	500 Airport Rd SE Salem, OR 97301	Filed By: Kris Skaro Rules Coordinator
CONTACT: Kris Skaro 503-540-1181 Kris.Skaro@lottery.oregon.gov	500 Airport Rd SE Salem, OR 97301	Filed By: Kris Skaro Rules Coordinator			


<p>Five-Year Rule Review ORS 183.405</p>	
Rule Name: Prescription Drug Monitoring Program	
Rule Number(s): OAR 847-010-0120	
Adoption Date: April 7, 2020	Review Date: November 12, 2024
Review Due Date: April 7, 2025	Sent to SOS Date: January 10, 2025
<input checked="" type="checkbox"/> Advisory Committee Used: Administrative Affairs Committee <input type="checkbox"/> Advisory Committee Not Used	
<p>What was the intended effect of this rule adoption?</p> <p>The rule was intended to align with the requirement in HB 4143 (2018), ORS 431A.877, for all Oregon Medical Board licensees to register for the Prescription Drug Monitoring Program (PDMP) if they have a United States Drug Enforcement Agency (DEA) registration to prescribe in Oregon. The Oregon Health Authority adopted OAR 333-023-0825 to implement the requirement. The Board's rule mirrored the OHA rule and provided clear notification of the requirement for Board licensees to register for PDMP.</p>	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>Has this rule adoption had its intended effect?</p> <p>The rule serves the intended purpose stated above.</p>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>Was the anticipated fiscal impact of this rule correct?</p> <p>The Oregon Medical Board anticipated no fiscal impact on state agencies, units of local government, or the public. There has been no fiscal impact.</p>
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<p>Have subsequent changes in the law required this rule to be/can be amended or repealed?</p> <p>There have been no changes in law requiring the rule to be amended. OHA has not amended their equivalent rule in OAR 333-023-0825.</p>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>Is there a continued need for this rule?</p> <p>Yes.</p>



Temporary Rulemaking Procedures

An agency may adopt, amend, or suspend a rule for up to 180 days without fulfilling notice and hearing requirements with the agency’s finding that “failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned.”

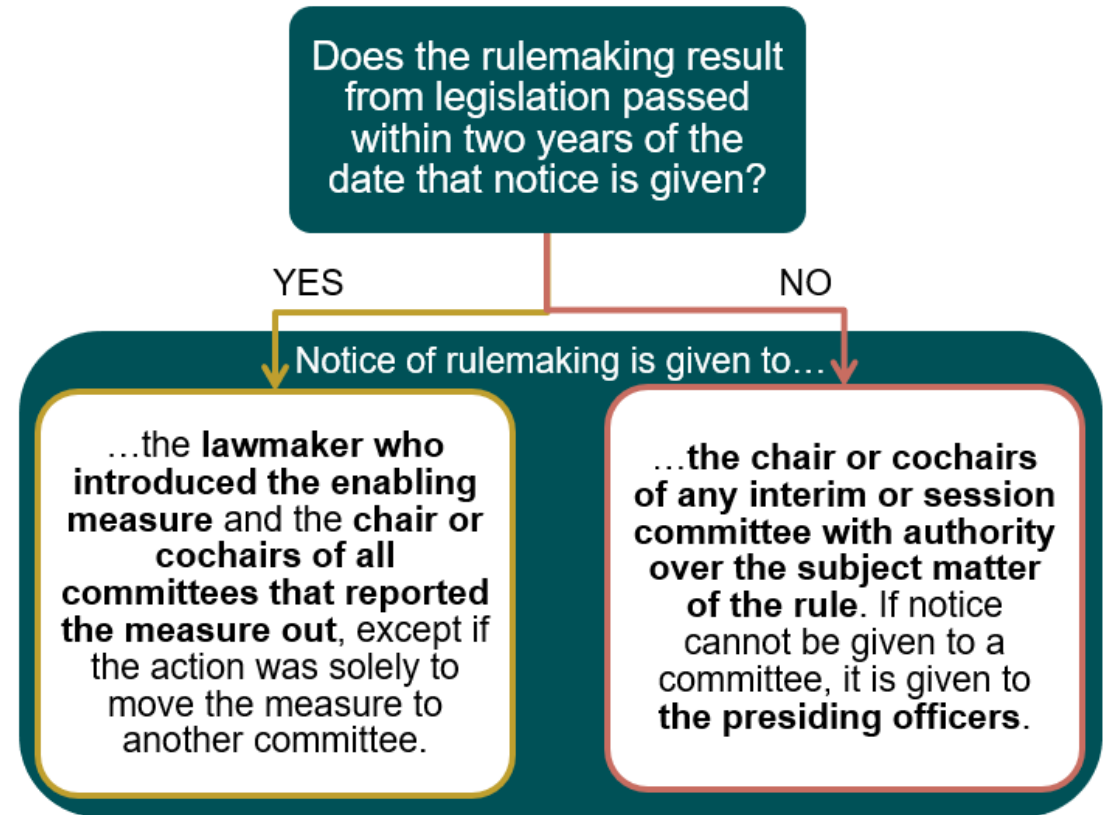


OFFICE OF THE SECRETARY OF STATE LAVONNE GRIFFIN-VALADE SECRETARY OF STATE CHERYL MYERS DEPUTY SECRETARY OF STATE AND TRIBAL LIAISON		ARCHIVES DIVISION STEPHANIE CLARK DIRECTOR 800 SUMMER STREET NE SALEM, OR 97310 503-373-0701
TEMPORARY ADMINISTRATIVE ORDER INCLUDING STATEMENT OF NEED & JUSTIFICATION ODE 10-2024 CHAPTER 581 OREGON DEPARTMENT OF EDUCATION		FILED 02/16/2024 4:37 PM ARCHIVES DIVISION SECRETARY OF STATE & LEGISLATIVE COUNSEL
FILING CAPTION: Waivers and Permissions: Inclement Weather Impacts on Instructional Time Temporary Amendments		
EFFECTIVE DATE: 02/16/2024 THROUGH 08/13/2024		
AGENCY APPROVED DATE: 02/15/2024		
CONTACT: Haedon Brunelle 503-508-3886 haedon.brunelle@ode.oregon.gov	255 Capitol St. NE Salem, OR 97301	Filed By: Haedon Brunelle Rules Coordinator
NEED FOR THE RULE(S): This rule would allow districts to count up to 14 hours of time lost to inclement weather towards instructional time for the 2023-24 school year. On January 18, Governor Kotek declared a statewide emergency due to the severe ice storm that impacted counties across the state. The storm prohibited some school districts to safely open and operate school facilities. In many districts, students missed a full week of school. School districts are required to provide a certain amount of instructional time each year. The instructional requirements are set out in OAR 581-022-2320. This is a Division 22 standard. Under the proposed temporary rule, districts faced with a significant number of lost days due to inclement weather would have two options for the 2023-24 school year. First, districts could request permission to count up to 14 hours of time lost to inclement weather towards instructional time. Second, if 14 hours is not enough, a district may request a one-year waiver of the instructional time requirement using the existing Division 22 waiver process.		

Legislative Oversight of Agency Rulemaking

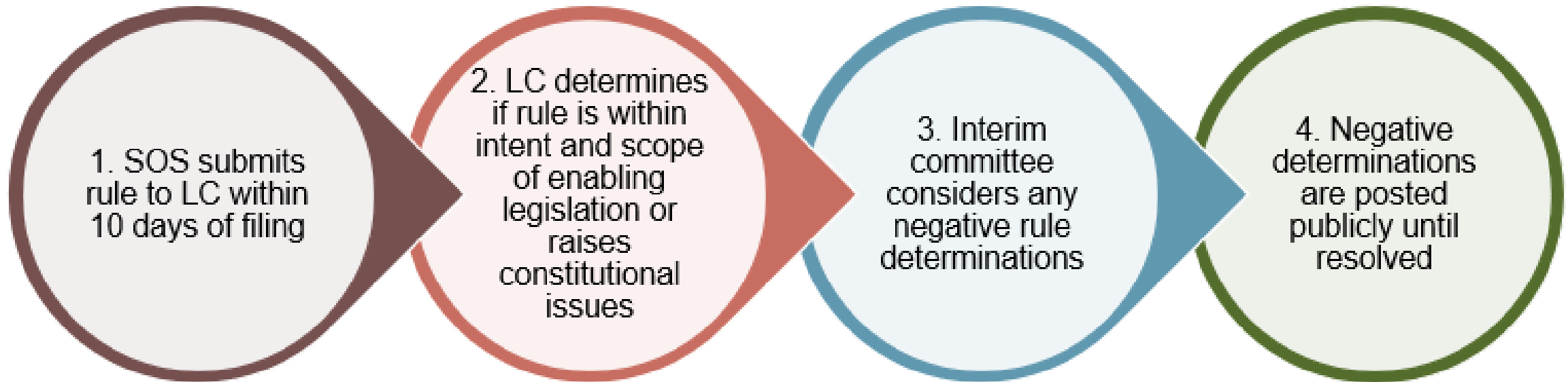
Permanent Rulemaking Requires:

- notice of permanent rulemaking to specified lawmakers and legislative committees at least 49 days before the effective date.
- the SOS to submit an electronic copy of the adopted, amended, or repealed rule to Legislative Counsel within 10 days of filing.
- each agency to make an annual rulemaking report to the Legislative Assembly



Legislative Oversight of Agency Rulemaking

Legislative Review



Legislative Oversight of Agency Rulemaking

Legislative Review

After the end of each odd-numbered year regular session, LC develops and distributes a list assigning state agencies to at least one interim committee. Assignments are based on subject-matter and made with the goal of ensuring that the rule review workload is approximately equally distributed between the interim committees of both chambers.

Administrative Rule Review - Committee Assignment List	
(updated May 2024)	
Senate Interim Committees	
Education	Oregon Dept. of Education, Youth Development Division Oregon Dept. of Education Teacher Standards and Practices Commission Chief Education Office
Energy and Environment	Dept. of Energy Public Utility Commission Oregon State Marine Board
Finance and Revenue	Oregon State Treasury Oregon Investment Council
Health Care	
Higher Education	HECC, Office of Student Access and Completion HECC, Office of Degree Authorization Southern Oregon University HECC, Office of Community Colleges and Workforce Development Higher Education Coordinating Commission
Housing and Homelessness	Oregon Housing and Community Services Department
Judiciary	Judicial Department Board of Parole and Post-Prison Supervision Dept. of State Police Dept. of Public Safety Standards and Training Oregon Youth Authority
Labor and Workplace Standards	Employment Relations Board DCBS, Oregon Occupational Safety and Health Division Employment Department
Revenue	Dept. of Revenue Oregon State Lottery
Rules	Secretary of State, Audits Division Secretary of State, Archives Division Office of the Public Records Advocate Citizens' Initiative Review Commission



Legislative Oversight of Agency Rulemaking

Legislative Review

Negative rule determinations that have been adopted by interim committees are listed below by administrative rule review number.

Negative Rule Determinations

OAR 413-015-0420 — ARR #1201

The House Interim Committee on Human Services adopted the negative determination of Legislative Counsel with respect to this rule on May 25, 2010.

April 13, 2010

Administrative Rule Review

WRITTEN FINDINGS OF NEGATIVE DETERMINATION (Pursuant to ORS 183.720 (3))

Agency: Department of Human Services—Children, Adults and Families Division

OAR 413-015-0420

The above temporary rule was filed with the Secretary of State on February 12, 2010, to become effective February 12, 2010, through August 11, 2010.

Pursuant to ORS 183.720 (3), we have made the following determination:

The rule raises constitutional issues, for the reasons set forth below.

1. The portions of the rule set forth below violate or, as implemented by the Child Protective Services (CPS) worker, could violate the Fourth Amendment to the United States Constitution pursuant to the holding in Greene v. Camreta, 588 F.3d 1011 (9th Cir. 2009):
 - a. OAR 413-015-0420 (1)(b)(A) provides that a CPS worker “must notify parents of the intent to interview a child, unless notification could compromise the child’s safety.” (Emphasis added.) The phrase “or a criminal investigation” is struck through in the amendment to the rule purportedly to bring the rule within the holding of the recent federal court opinion in Greene.
 - b. OAR 413-015-0420 (1)(b)(B) requires the CPS worker to contact the child “at home, school, day care, or any other place where the worker believes the child may be found.”
 - c. OAR 413-015-0420 (1)(b)(C)(ii) instructs the CPS worker that the worker “must wait until the parent is present in the home to complete a child interview in the home if the referral does not indicate severe harm or threat of severe harm to the child or if there is not reasonable cause to believe the child’s health or safety is endangered by the conditions of the dwelling or that the child is inadequately supervised.”



Legislative Oversight of Agency Rulemaking

Identification of Duplicative or Conflicting Rules

“A member of the Legislative Assembly may request that Legislative Counsel prepare a report on a rule adopted by a state agency that the member asserts is duplicative of or conflicts with another rule. A person affected by a rule adopted by a state agency may request that Legislative Counsel prepare a report on the rule if the person asserts that the rule is duplicative of or conflicts with another rule. A request for a report must be in writing and contain copies of the two rules that are claimed to be duplicative or conflicting. The second rule may be either a rule adopted by a state agency or a rule or regulation adopted by a federal agency.”

ORS 183.720(7)(a)



Questions