

Annual Rulemaking Report

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The mission of the Oregon Department of Corrections is to promote public safety by holding offenders accountable for their actions and reducing the risk of future criminal behavior.

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EXECUTIVE SUMMARY

The Oregon Department of Corrections (DOC) is pleased to submit this report to the Legislative Assembly as directed by ORS 192.245. Paper copies of this report may be obtained from DOC Headquarters, 2575 Center Street NE, Salem, Oregon 97301.

ORS 183.335 requires agencies to provide public notice on the proposed adoption, amendment, or repeal of administrative rules. Subsection five of the statute allows agencies to adopt, amend, or suspend administrative rules without public notice in cases where it finds inaction would result in “serious prejudice to the public interest.”

DOC provides public notice of its proposed rulemakings as required under ORS 183.335, including providing notice to adults in custody (AICs) through institution newsletters. As provided in ORS 183.335(3)(b) and OAR 291-001-0051, AIC participation in proposed rulemakings is limited to written submissions. AICs may access proposed rulemaking in institution libraries and submit written comment to the department’s Rules Coordinator. The department values input from AICs and considers their comments with the same importance as those from the general public.

DOC utilizes temporary rulemaking judiciously to avoid immediate impact on institution operations. In 2019, the department adopted, amended, or repealed a total of 184 rules. The department adopted, amended, or suspended a total of seven temporary rules.

House Bill 4106 Overview and Background

House Bill (HB) 4106 requires state agencies to report to the Legislative Assembly, no later than February 1 of each year, all administrative rules adopted, amended, repealed, or suspended during the preceding 12-month period. This includes specific information related to the use of temporary rulemaking.

ORS 183.335 provides the procedures and timelines for state agencies to give public notice and receive public input regarding the adoption, amendment, or repeal of administrative rules. Statute also allows temporary rulemaking to occur without public notice and input if "failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned," if specified steps are taken. Temporary rules may only be in effect for up to 180 days.

HB 4106 requires state agencies to report annually to the Legislative Assembly information regarding agencies' use of the temporary rulemaking process, specifically a statement of need for each rule and the agency's findings that a failure to act promptly would result in serious prejudice. In addition, the report must include an explanation for each rule as to why temporary rulemaking was the most appropriate method and the justification for not using the standard rulemaking procedure.

2019 Rules Adopted, Amended, or Repealed with Public Notice

In the preceding 12-month period, DOC adopted, amended, or repealed a total of 184 rules. These are categorized as follows:

- 51 rules adopted
- 96 rules amended
- 37 rules repealed

2019 Temporary Rulemaking

In the same period, the department temporarily amended seven rules. The rules were filed in two different rulemaking notices. The following is a list of the temporary rules.

OAR 291-058 Structured, Intermediate Sanctions, filed February 12, 2019, effective June 19, 2019.

Amend:

- 291-058-0020 Definitions
- 291-058-0030 Applications to Offenders
- 291-058-0045 Imposition of Administrative Sanctions/Interventions on Offenders
- 291-058-0050 Reporting of Sanctions for Probation Case/Role of Court and District Attorney
- 291-058-0070 Misdemeanor Cases

Since these rules are from the same rulemaking, the statement of need and justification are the same for all the structured intermediate sanctions listed above.

Statement of Need for Temporary Rules

These rules were necessary for the department to update the established processes used to support community corrections programs that provide appropriate sentencing alternatives and improve local services for persons charged with criminal offenses. These changes are necessary to carry out recent legislative changes made to drug-related misdemeanors.

Justification for Temporary Rules

These rules conflicted with changes made in 2017 legislation that authorized the supervision of drug-related misdemeanors. The rule language did not include application to drug-related misdemeanors as defined in ORS 423.478 for crimes committed on or after August 15, 2017. Adopting these changes into rule removed the conflict between rule and statute and resolved problematic issues for Judges.

OAR 291-077 Performance Recognition and Award System (Adult in Custody), filed April 01, 2019, effective June 24, 2019.

Amend:

- 291-077-0030 Authority, Purpose, and Policy
- 291-077-0033 Definitions

Since these rules are from the same rulemaking, the statement of need and justification are the same for all the Performance Recognition and Award System (Adult in Custody) rules listed above.

Statement of Need for Temporary Rules

The purpose of these rules is to establish policy governing its provision and distribution of monetary awards and other incentives to AICs made under the department's Performance Recognition and Awards System (PRAS). The department has determined the rules which establish a 120-day evaluation period no longer serve a purpose and create disparity in how AICs are awarded points.

Justification for Temporary Rules

The department determined the 120-day evaluation waiting period created a disparity when AICs in different custody level facilities were eligible to earn awards. The department found that following the permanent rulemaking process, rather than taking this temporary rulemaking action, would result in serious prejudice to the public interest. Failure to immediately adopt and implement this temporary rule amendment would unnecessarily delay the department's ability to consistently and equally award appropriate PRAS points to eligible AICs.