



State Board of Oregon
2024 Annual Meeting
OARs



State Board of Towing

October 29, 2024 – Annual Meeting Strategic Planning Statutes

Documents Referred to:

- Oregon Administrative Rules Chapter 750
- Judicial Deference Information from DOJ

Information:

1. The Board adopted initial operational rules in October 2023, effective January 1, 2024.
2. The Board has adopted Bylaws in Spring 2024; OARs should be amended to remove the operational OARs now incorporated in the Bylaws.
3. Per DOJ: administrative rules should be adopted to clarify the plain language of statutes; if the plain language of the statute is clear and defined, there is no requirement for an administrative rule.
4. The Board has adopted two different public policies as a framework for investigations and assessing disciplinary actions, and to monitor what OARs should be adopted to clarify the requirements of the current status.
5. The OARs have a general, default civil penalty schedule. The Board may consider adopting higher or lower civil penalties for violations of specific ORSs.

Administrative Rule timeline:

1. Need for administrative rules discussed at work sessions and public meetings.
2. Proposed administrative rules drafted; input solicited from collaborative partners, towing industry, the Board's Public Policy and Proposed Rules Advisory Group, and other interested parties.
3. Proposed Administrative Rules submitted to Secretary of State's office at least 60 days prior to effective date.
4. Proposed Administrative Rules published in Secretary of State Bulletin on the first business day of the month.
5. Proposed Administrative Rules hearing held no sooner than 21 days after publication, no later than 30 days before the effective date.
6. The Proposed Rules Hearing is not required. The Board has adopted the rules hearing as part of its public outreach and information process to ensure all interested parties have the opportunity to submit comments and testimony.

Objectives:

Consensus of when the Board would like to adopt OARs in 2025, tentatively add adoption of OARs to Board calendar.

Judicial Deference

Federal versus Oregon

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Federal Court Deference to Agency Rules

- The recent Supreme Court decision in *Loper Bright Enter. v. Raimondo*, 144 S Ct 2244, 2273 (2024), overruled the longstanding “*Chevron* doctrine.” The U.S. Supreme Court stated the *Chevron* doctrine was inconsistent and irreconcilable with the purpose of the federal Administrative Procedure Act and concluded that the APA’s judicial review provision, 5 USC §706, prohibited the type of deference embodied by the doctrine.
- Prior to *Loper*, the *Chevron* doctrine required the courts to defer to a **federal administrative agency’s reasonable interpretation of a federal statute when the statute was ambiguous or Congress was silent on the intent of the statute.** *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 104 S Ct 2778, 2781-82 (1984). With the *Loper* decision, courts will independently interpret an ambiguous or congressionally silent statute “to effectuate the will of Congress subject to constitutional limits.” *Loper Bright Enter.*, 144 S Ct at 2263 and 2273.
- Oregon courts follow the interpretive methodology prescribed by the federal courts only when interpreting federal statutes. *Friends of Columbia Gorge, Inc. v. Columbia River Gorge Comm’n*, 346 Or 366, 377-78 (2009). Accordingly, prior to *Loper*, Oregon courts interpreting federal statutes applied the *Chevron* doctrine when the federal methodology required it.

Judicial Deference in Oregon

Judicial deference to the agency’s rule depends on what kind of statutory terms are being implemented in the rule: exact terms, inexact terms, or delegative terms.

Springfield Education Assn. v. Springfield School Dist. No. 19, 290 Or 217 (1980).

Exact

- Relatively precise meaning on its face
- Usually do not need a rule at all
- No deference

Inexact

- Complete statement of legislative policy, but may need some clarification
- Usually no deference (perhaps if within statutory intent and agency has special expertise or was very involved in the legislative process)

Delegative

- Incomplete statement of legislative intent
- Delegates to agency authority to complete the policy through rulemaking
- Deference if agency’s rule is within the range of discretion allowed by the general statutory policy

Judicial Deference in Oregon

For review of state agency action under state law, Oregon courts never adopted the *Chevron* doctrine, instead applying their own interpretive framework under *Springfield*.

Although Oregon courts have used the term “deference” when evaluating agency action under state law, the term does not refer to deference as applied under the *Chevron* doctrine. Almost always limited to delegative terms, an Oregon court will identify the range of authority delegated under the statute and “defer” to the agency to the extent it has acted within the scope of that authority. **The *Loper* decision does not change this interpretive framework.**

Where *Loper* might have an impact is in the very rare situation of when a federal statute delegates federal authority to a state agency—*i.e.*, when a federal statute evinces an intent that a state agency “speak with the force of the [federal] law.” In that rare situation, Oregon courts have applied *Chevron* deference to a state agency’s interpretation of federal statutes. Going forward, in those rare situations, Oregon courts may now apply the methodology described in *Loper*. Other than in this rare situation, *Loper* will have no impact on how Oregon courts interpret state law.