



# Oregon

Kate Brown, Governor

## Water Resources Department

North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
FAX 503-986-0904

### MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Thomas M. Byler, Director

**SUBJECT:** Agenda Item C, December 7, 2017  
Water Resources Commission Meeting

### Request to Adopt Rules Related to Rulemaking (OAR Chapter 690, Division 1)

#### I. Introduction

During this agenda item, the Commission will consider adoption of amendments to rules related to rulemaking procedures (OAR Chapter 690, Division 1) to reflect the latest version of the Attorney General's Uniform and Model Rules for Rulemaking. The final proposed rules are included in Attachment 1.

#### II. Background

The Administrative Procedures Act requires non-exempt agencies, including the Water Resources Department, to adopt rules of procedure for use in rulemaking. The Attorney General develops model rules, which can be adopted by state agencies. According to ORS 183.341 (Attachment 2), any agency may adopt by reference the Attorney General's Uniform and Model Rules of Procedure, by filing notice of adoption with the Secretary of State, without following formal rulemaking procedures.

The Department's proposed amendments to Division 1 adopt by reference the latest version of the Attorney General's Model Rules for Rulemaking in OAR Chapter 137, Division 001 (Attachment 3).

#### III. Discussion

The latest version of the Uniform and Model Rules for Rulemaking include changes in the notice provisions in ORS 183.335(8) made by the 2007 Legislative Assembly. The changes specify how an agency can provide notice to persons who have asked to be kept apprised of the agency's rulemaking activities. In addition, the changes eliminate the requirement to summarize the notice at the start of a rulemaking hearing unless a participant asks for a summary; replaces the requirement to send copies of temporary rules less than ten pages long with a requirement to summarize temporary rules and explain where to obtain a copy; and makes edits in wording.

The update to Division 1 adopts by reference the most recent edition of the Attorney General's Uniform and Model Rules dated January 1, 2008.

#### **IV. Conclusion**

The final proposed rules in Attachment 1 (OAR Chapter 690, Division 1) amend OAR 690-001-0005 to adopt the January 1, 2008 Attorney General's Uniform and Model Rules for Rulemaking, which are outlined in OAR Chapter 137, Division 1.

#### **V. Alternatives**

The Commission may consider the following alternatives:

1. Adopt the final proposed rules in Attachment 1
2. Adopt the final proposed rules as modified by the Commission.
3. Not adopt the final proposed rules and provide the Department with further direction.

#### **VI. Director's Recommendations**

The Director recommends Alternative 1 to adopt the final proposed rules for OAR Chapter 690, Division 1 in Attachment 1.

Attachments:

1. Final Proposed Rules - OAR Chapter 690, Division 1
2. 2015 ORS 183.341
3. OAR Chapter 137, Division 1- Model Rules for Rulemaking

Dwight French  
(503) 986-0819

Machelle Bamberger  
(503) 986-0812

**WATER RESOURCE DEPARTMENT  
DIVISION 001  
RULEMAKING; ATTORNEY GENERAL'S MODEL RULES**

**690-001-0000**

**Notice**

Prior to the adoption, amendment, or repeal of any permanent rule by the Water Resources Commission or the Water Resources Department, the Department must give notice of the proposed adoption, amendment, or repeal:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;
- (2) By mailing or electronic mailing a copy of the notice and a copy of the rule or an explanation of how the person or organization may acquire a copy of the rule to persons and organizations on the Water Resources Department's mailing list established pursuant to ORS 183.335(8) at least 28 days prior to the effective date;
- (3) By mailing or electronic mailing to the persons specified in ORS 183.335(15) at least 49 days before the effective date; and
- (4) By mailing or electronic mailing a copy of the notice to the following persons, organizations, or publications at least 28 days before the effective date:
  - (a) Associated Press;
  - (b) Persons and organizations that filed a written request for such notice with the Department; and
  - (c) Cities, counties, and local planning agencies likely to be directly affected by the proposed rule.
- (5) In lieu of providing a copy of the rule or rules as proposed, the Department may provide a summary of the rule or rules and state how and where a copy may be obtained on paper, via electronic mail, or from a specified web site. If the Department posts the rule or rules on a web site, the Department must provide a web address or link sufficient to enable a person to find the rules easily. Failure to provide a web address or link in the rule summary will not affect the validity of any rule.

(6) Persons who have requested from the Department notices of proposed rulemakings may choose to receive notices by mail rather than receive the notices electronically.

Stat. Auth.: ORS 536.025, 536.027 & 183.341

Stats. Implemented: ORS 183.335, 183.341

Hist.: WRD 1, f. & ef. 11-25-75; WRD 11-1986, f. & ef. 9-30-86; WRD 8-1992, f. & cert. ef. 6-24-92; WRD 2-1994, f. & cert. ef. 3-4-94; PAR 9-2006, f. & cert. ef. 10-9-06; WRD 6-2006, f. & cert. ef. 10-6-06

### **690-001-0005**

#### **Uniform and Model Rules of Procedure, Adoption**

The Water Resources Commission adopted the January 1, ~~2006-2008~~ edition of the Attorney General's Uniform and Model Rules ~~of Procedure~~ for Rulemaking. The Water Resources Department and the Water Resources Commission must follow the Uniform and Model Rules in all matters, except where a different procedure is prescribed by statute.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the agency.]

Stat. Auth.: ORS 536.025, 536.027 & 183.341

Stats. Implemented: ORS 183.341

Hist.: WRD 3, f. & ef. 2-18-77; WRD 2-1978, f. & ef. 5-1-78; WRD 8-1978, f. & ef. 10-18-78; WRD 1-1980, f. & ef. 1-9-80; WRD 2-1982, f. & ef. 1-22-82; WRD 1-1984, f. & ef. 2-1-84; WRD 6-1986, f. & ef. 11-12-86; WRD 9-1988, f. & cert. ef. 8-5-88; WRD 15-1990, f. & cert. ef. 8-23-90; WRD 2-1992, f. & cert. ef. 2-10-92; WRD 8-1992, f. & cert. ef. 6-24-92; WRD 1-1994, f. & cert. ef. 1-14-94; WRD 1-1999, f. & cert. ef. 2-5-99; WRD 6-2006, f. & cert. ef. 10-6-06

3

## 2015 ORS 183.341<sup>1</sup>

### Model rules of procedure

- **establishment**
- **compilation**
- **publication**
- **agencies required to adopt procedural rules**

- (1) The Attorney General shall prepare model rules of procedure appropriate for use by as many agencies as possible. Except as provided in ORS 183.630 (Model rules of procedure), any agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures under ORS 183.335 (Notice). Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355 (Filing and taking effect of rules) for the filing of rules. The model rules may be amended from time to time by an adopting agency or the Attorney General after notice and opportunity for hearing as required by rulemaking procedures under this chapter.
- (2) Except as provided in ORS 183.630 (Model rules of procedure), all agencies shall adopt rules of procedure to be utilized in the adoption of rules and conduct of proceedings in contested cases or, if exempt from the contested case provisions of this chapter, for the conduct of proceedings.
- (3) The Secretary of State shall publish in the Oregon Administrative Rules:
  - (a) The Attorney General's model rules adopted under subsection (1) of this section;
  - (b) The procedural rules of all agencies that have not adopted the Attorney General's model rules; **and**
  - (c) The notice procedures required by ORS 183.335 (Notice) (1).
- (4) Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend or repeal a rule.

- (5) No rule adopted after September 13, 1975, is valid unless adopted in substantial compliance with the rules adopted pursuant to subsection (4) of this section. [1975 c.759 §6 (enacted in lieu of 183.340); 1979 c.593 §12; 1997 c.837 §1; 1999 c.849 §§24,25; 2003 c.75 §28]

---

<sup>1</sup> Legislative Counsel Committee, *CHAPTER 183—Administrative Procedures Act; Legislative Review of Rules; Civil Penalties*, [https://www.oregonlegislature.gov/bills\\_laws/ors/ors183.html](https://www.oregonlegislature.gov/bills_laws/ors/ors183.html) (2015) (last accessed Jul. 16, 2016).

OregonLaws.org, a WebLaws.org site

## DEPARTMENT OF JUSTICE

### DIVISION 1

### MODEL RULES FOR RULEMAKING

#### Definitions

#### 137-001-0005

##### Definitions

For the purposes of OAR 137-001-0005 to 137-005-0070, unless otherwise defined therein, the words and phrases used in these rules have the same meaning as given to them in ORS 183.310 and:

(1) "Consensus" means a decision developed by a collaborative DR process that each participant can accept;

(2) "Convenor" means a person who aids in identifying appropriate issues and members for a collaborative rulemaking committee to develop a proposed rule, or who aids in identifying issues and participants for a collaborative dispute resolution process;

(3) "Collaborative dispute resolution process" or "collaborative DR process" means any process by which a collaborative dispute resolution provider assists the participants in working together to develop a mutually acceptable resolution to a controversy. A collaborative DR process does not include:

(a) Contested case hearings; or

(b) Meetings, outside of a collaborative rulemaking process, in which a facilitator is used solely to lead an orderly meeting, manage an agenda or assist the group in accomplishing tasks and the facilitator is not attempting to resolve a controversy by developing consensus among the participants.

(4) "Collaborative dispute resolution provider" or "collaborative DR provider" means an individual who assists the participants in a dispute resolution process to work together to develop a mutually acceptable resolution to a controversy. The collaborative DR provider may function as a mediator, facilitator, convenor, neutral fact-finder or other neutral. Arbitrators, investigators, customer service representatives and ombudspersons are not considered collaborative dispute resolution providers.

(5) "Disputants" means agencies, persons or entities, or their representatives, who have a direct interest in a controversy and does not include a collaborative DR provider or person involved only as a witness.

(6) "Mediation" means a process in which a collaborative DR provider assists two or more disputants in reaching a mutually acceptable resolution of the controversy. Mediation may also include facilitation or other processes in which a facilitator or other collaborative DR provider encourages and fosters discussions and negotiations aimed at reaching consensus among process participants.

(7) "Neutral fact-finder" means a third party who assists with the resolution of a controversy by conducting an investigation of critical facts and rendering non-binding, advisory findings.

(8) "Participants" means agencies, persons or entities involved in a dispute resolution proceeding, other than a collaborative DR provider or witness.

(9) "Agreement to collaborate" means the agreement specified in OAR 137-005-0030.

Stat. Auth.: ORS 183.341 & ORS 183.502

Stats. Implemented: ORS 183.502

Hist.: 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

## Rulemaking

### 137-001-0007

#### Public Input Prior to Rulemaking

(1) The agency may seek public input before giving notice of intent to adopt, amend, or repeal a rule. Depending upon the type of rulemaking anticipated, the agency may appoint an advisory committee, solicit the views of persons on the agency's mailing list maintained pursuant to ORS 183.335(8), or use any other means to obtain public views to assist the agency.

(2) If the agency appoints an advisory committee, the agency shall make a good faith effort to ensure that the committee's members represent the interests of persons likely to be affected by the rule. The meetings of the advisory committee shall be open to the public.

(3) If the advisory committee indicates that the rule will have a significant adverse impact on small businesses, the agency will seek the advisory committee's recommendations on compliance with ORS 183.540.

(4) The agency will consider recommendations from the advisory committee in preparing the statement of fiscal impact required by ORS 183.335(2)(b)(E).

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 183.333

Hist.: JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

### 137-001-0008

#### Assessment for Use of Collaborative Process in Rulemaking

(1) The agency may, in its discretion, conduct an assessment to determine if collaborative rulemaking is appropriate and, if so, under what conditions. The agency may consider any relevant factors, including whether:

(a) There is a need for a rulemaking action;

(b) The persons, interest groups or entities that will be significantly affected by any rulemaking action resulting from the collaborative rulemaking process:

(A) Are not so numerous that it would be impractical to convene a collaborative rulemaking committee;



- (B) Can be readily identified;
  - (C) Are willing to participate in the collaborative rulemaking;
  - (D) Are willing to negotiate in good faith; and
  - (E) Have the time, resources and ability to participate effectively in a collaborative rulemaking process;
- (c) The persons identified as representative of the interests of a group of persons or of an organization have sufficient authority to negotiate on behalf of the group or organization they represent;
- (d) There is a reasonable likelihood that a committee will reach a consensus on the proposed rulemaking action within an appropriate period of time to avoid unreasonable delay in the agency's final rulemaking;
- (e) The interest of the agency is in joint problem-solving, agreement or consensus which could best be met through collaborative rulemaking, and not solely in obtaining public comment, consultation or feedback, which may be addressed through an advisory committee;
- (f) If the public involvement objectives of ORS 183.333 are best met through the use of a collaborative rulemaking process.
- (g) The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee;
- (h) The agency, to the extent consistent with its legal obligations, will use the consensus of the committee with respect to the proposed rulemaking action as the basis for a notice of intended adoption, amendment, or repeal of a rule pursuant to ORS 183.335; and
- (i) Whether a collaborative rulemaking committee should also serve as an advisory committee under ORS 183.333(1).
- (2) The agency may use the services of a convenor to assist the agency in conducting the assessment and in further identifying persons, interest groups or entities who will be significantly affected by a proposed rulemaking action and the issues of concern to them, and in ascertaining whether a collaborative rulemaking committee is feasible and appropriate for the particular rulemaking action. Upon request of the agency, the convenor may ascertain the names of persons who are willing and qualified to represent interests that will be significantly affected by the proposed rule.
- (3) Upon request of the agency, the convenor shall report findings in writing and may make recommendations to the agency. Any written report and recommendations of the convenor shall be made available to the public upon request.
- (4) If the collaborative rulemaking committee also serves as an advisory committee under ORS 183.333(1), the committee will make recommendations about the fiscal impact of the proposed rule or rules, as required by ORS 183.333.

Stat. Auth.: ORS 183.341 & 183.502

Stats. Implemented: ORS 183.502, 183.333 & 183.341

Hist.: JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

137-001-0009

### Use of Collaborative Dispute Resolution in Rulemaking

(1) If, after consideration of the factors set out in OAR 137-001-0008, the agency establishes a collaborative rulemaking committee, the agency shall inform the committee regarding:

(a) The membership of the rulemaking committee;

(b) Whether or not the agency will be a member of the committee;

(c) A proposed agenda and schedule for completing the work of the committee, including a target date for publication by the agency of any intended rulemaking action pursuant to ORS 183.335; and

(d) Whether or not the rulemaking committee also serves as an advisory committee under ORS 183.333(1) and is therefore subject to ORS 183.333(3) and (4).

(2) The agency may inform persons on the agency's mailing list maintained pursuant to ORS 183.335(8), those legislators designated in ORS 183.335(15) and any other persons of the subject and scope of rulemaking action that may result from the work of the collaborative rulemaking committee.

(3) The agency may limit membership on a collaborative rulemaking committee to ensure proper functioning of the committee or to achieve balanced membership. If the agency will be a member of the committee, the person or persons representing the agency may participate in the deliberations and activities of the committee with the same status as other members of the committee.

(4) A collaborative rulemaking committee established under this rule shall consider the matter proposed by the agency and attempt to reach a consensus concerning a proposed rulemaking action with respect to such matter.

(5) If the collaborative rulemaking committee established under this rule serves as an advisory committee under ORS 183.333(1), the committee shall comply with ORS 183.333(3) and (4).

(6) The agency shall explain to the committee the agency's expectations for using any consensus reached by the committee in any rulemaking action and explain the decision making process within the agency that would be necessary to bind the agency to any consensus reached by the committee.

(7) The agency may select a facilitator, subject to removal by the committee by consensus. In selecting a facilitator, the agency may consider the convenor or any qualified individual, including an agency employee. If the committee elects to remove the facilitator selected by the agency, the agency may select another facilitator or allow the committee to select a facilitator by consensus. An individual designated to represent the agency in substantive issues may not serve as a facilitator or otherwise chair the committee.

(8) A facilitator approved or selected by a collaborative rulemaking committee may chair the meetings of the committee, assist the members of the committee in conducting discussions and negotiations, or manage the keeping of minutes and records and such assistance, if any, shall be provided in an impartial manner.

(9) For purposes of a collaborative rulemaking, both convenors and facilitators are considered dispute resolution providers, except that the agency's personal services contract for convenors need not contain the elements listed in OAR 137-005-0040(6)(b).

(10) A collaborative rulemaking committee established under this rule may adopt procedures for the operation of the committee. If the committee reaches a consensus on a proposed rulemaking action, the committee shall transmit to the agency a report containing the proposed rulemaking action. If the committee does not reach a consensus on a proposed rulemaking action, the committee may transmit to the agency a report specifying any areas in which the committee did reach a consensus.

(11) If the agency chooses to proceed with a rulemaking action after receiving the report of the committee, the agency shall comply with the rulemaking procedures in ORS 183.325 to 183.355.

(12) The agency may request the committee to reconvene after a notice of proposed rulemaking action required by ORS 183.335(1) in order to consider any public comments received by the agency related to the rule. If the agency wishes to receive input from the committee after the deadline for comment on the proposed rulemaking action, the agency shall extend the comment deadline in order to receive such recommendations from the committee. The agency shall provide notice of the extended deadline to persons on the agency's mailing list maintained pursuant to ORS 183.335(8), to those legislators designated in ORS 183.335(15) and to persons identified in its notice rule adopted under ORS 183.341(4).

(13) The collaborative rulemaking committee shall terminate upon the agency's adoption, amendment, or repeal of the final rule under consideration, unless the committee specifies an earlier termination date. The agency may terminate the collaborative rulemaking committee at any time.

(14) The members of a collaborative rulemaking committee are responsible for their own expenses of participation in the committee. If authorized by law, the agency may pay a member's reasonable travel and per diem expenses and other expenses as the agency deems appropriate.

Stat. Auth.: ORS 183.341 & 183.502

Stats. Implemented: ORS 183.502, 183.333 & 183.341

Hist.: JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

### **137-001-0011**

#### **Permanent Rulemaking Notice**

(1) The agency will give notice of proposed permanent rulemaking to those listed in the rule adopted under ORS 183.341(4) and to legislators specified by 183.335(15) by mailing, electronic mailing, or personally delivering a copy of the rule or rules as proposed and a copy of the notice required under 183.335(2). In lieu of providing a copy of the rule or rules as proposed, the agency may describe the subject matter of the rule or rules and state how and where a copy may be obtained on paper, via electronic mail, or from a specified web site. If the agency posts the rule or rules on a web site, the agency must provide a web address or link sufficient to enable a person to find the rules easily. Failure to provide a web address or link shall not affect the validity of any rule.

(2) Persons who have asked the agency to send notices of proposed rulemaking to them pursuant to ORS 183.335(8) may choose to receive copies of the proposed rule or rules and notice required under 183.335(2) by mail.

(3) If the agency offers it, persons who have asked the agency to send notices of proposed rulemaking to them pursuant to ORS 183.335(8) may choose to receive:

(a) An abbreviated form of mailed notice containing the caption, summary, and information about how to comment, required by ORS 183.335(2)(a), accompanied by a reference to a web site where copies of the proposed rule or rules and other information required by 183.335(2) are posted or

(b) Notice by electronic mail that either contains the proposed rule or rules and the notice required under ORS 183.335(2) as attachments or provides a reference to a web site where the notice and the rule(s) are posted.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.335 & 183.341

Hist.: JD 1-1988, f. & cert. ef. 3-3-88; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 10-2007, f. 10-15-07 cert. ef. 1-1-08

### **137-001-0018**

#### **Limitation of Economic Effect on Small Businesses**

(1) Before the adoption of a permanent rule, the agency will determine whether the economic effect upon small business is significantly adverse, based upon:

(a) The economic effect analysis under ORS 183.335(2)(b)(E);

(b) The statement of cost of compliance effect on small businesses described in ORS 183.336;

(c) Recommendations from any advisory committee appointed under ORS 183.333(1) or from any fiscal impact advisory committee, if any, appointed under ORS 183.333(5); and

(d) Comments made in response to its rulemaking notice.

(2) If the agency determines there is a significant adverse effect on a small business or small businesses, it shall modify the rule to reduce the rule's adverse economic impact on those businesses to the extent consistent with the public health and safety purposes of the rule, as provided in ORS 183.540.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.341

Hist.: 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 10-2007, f. 10-15-07 cert. ef. 1-1-08

### **137-001-0030**

#### **Conduct of Rulemaking Hearings**

(1) The hearing to consider a rule shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency, a member of its governing body, or any other person designated by the agency.

(2) At the beginning of the hearing, any person wishing to be heard shall provide their name, address, and affiliation to the presiding officer. The presiding officer may also require that the person complete a form showing any other information the presiding officer deems appropriate. Additional persons may be heard at the discretion of the presiding officer.

(3) At the beginning of the hearing, the presiding officer must summarize, to the extent requested by any participant, the content of the notice given under ORS 183.335.

(4) Subject to the discretion of the presiding officer, the order of the presentation shall be:

(a) Statements of proponents;

(b) Statements of opponents; and

(c) Statements of other witnesses present and wishing to be heard.

(5) The presiding officer or any member of the agency may question any witness making a statement at the hearing. The presiding officer may permit other persons to question witnesses.

(6) There shall be no additional statement given by any witness unless requested or permitted by the presiding officer.

(7) The hearing may be continued with recesses as determined by the presiding officer until all listed witnesses have had an opportunity to testify.

(8) The presiding officer shall, when practicable, receive all physical and documentary evidence presented by witnesses. Exhibits shall be marked and shall identify the witness offering the exhibit. Any written exhibits shall be preserved by the agency pursuant to any applicable retention schedule for public records under ORS 192.001 et seq.

(9) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.

(10) The presiding officer shall make a record of the proceeding, by audio or video tape recording, stenographic reporting or minutes.

Stat. Auth.: ORS 183.341 & 183.390

Stats. Implemented: ORS 183.335(3) & 183.341

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 4-1979, f. & ef. 12-3-79; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 10-2007, f. 10-15-07 cert. ef. 1-1-08

### **137-001-0040**

#### **Rulemaking Record**

(1) The agency shall maintain a record of any data or views it receives in response to a notice of intent to adopt, amend, or repeal a rule.

(2) If a hearing is held, the agency may require the presiding officer, within a reasonable time after the hearing, to provide the agency a written summary of statements given and exhibits received and a report of the officer's observations of physical experiments, demonstrations, or exhibits. The presiding officer may make recommendations but such recommendations are not binding upon the agency.

(3) The rulemaking record shall be maintained by the rules coordinator. The agency shall make the rulemaking record available to members of the public upon request.

(4) The rulemaking record will include:

(a) The presiding officer's summary of or a recording of oral submissions received at the hearing, and the presiding officer's recommendation, if any;

(b) Any written comments received in response to the notice of rulemaking;

(c) The recommendations of an advisory committee or fiscal impact advisory committee, if any, appointed under ORS 183.333;

(d) The agency's statements of the objective of the rule, including how the agency will evaluate whether the rule accomplishes the objective, when required by ORS 183.335(3)(d);

(e) Any public comment received in response to the request for comments made pursuant to ORS 183.335(2)(b)(G);

(f) The notice of the agency's intended action, required by ORS 183.335(1) and (2); and

(g) A copy of the filing with the Secretary of State, required by ORS 183.355(1) or (3).

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.335(3), 183.341 & 183.355

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 7-1995, f. 8-25-95, cert. ef. 1-1-96; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

#### **137-001-0050**

##### **Agency Rulemaking Action**

At the conclusion of the hearing, or after receipt of the presiding officer's requested report and recommendation, if any, the agency may adopt, amend, or repeal rules covered by the notice of intended action. The agency shall fully consider all written and oral submissions.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.335(3)

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86

#### **137-001-0060**

##### **Secretary of State Rule Filing**

(1) The agency shall file in the office of the Secretary of State a certified copy of each adopted or amended rule and each order repealing an agency rule.

(2) The rule or order shall be effective upon filing with the Secretary of State unless a different effective date is required by statute or specified in the rule or order.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 183.355

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; 1AG 4-1979, f. & ef. 12-3-79; JD 2-1986, f. &

ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

**137-001-0070**

**Petition to Promulgate, Amend, or Repeal Rule**

OAR 137-001-0070 was adopted by the Attorney General as required by ORS 183.390. Agencies must apply this rule without further adoption or amendment.

(1) An interested person may petition an agency to adopt, amend, or repeal a rule. The petition shall state the name and address of the petitioner and any other person known to the petitioner to be interested in the rule. The petition shall be legible, signed by or on behalf of the petitioner, and shall contain a detailed statement of:

(a) The rule petitioner requests the agency to adopt, amend, or repeal. When a new rule is proposed, the petition shall set forth the proposed language in full. When an amendment of an existing rule is proposed, the rule shall be set forth in the petition in full with matter proposed to be deleted and proposed additions shown by a method that clearly indicates proposed deletions and additions;

(b) Facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment, or repeal of the rule;

(c) All propositions of law to be asserted by petitioner.

(2) If the petitioner requests the amendment or repeal of an existing rule, the petition must also contain comments on:

(a) Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses;

(b) The continued need for the existing rule;

(c) The complexity of the existing rule;

(d) The extent to which the existing rule overlaps, duplicates, or conflicts with other state or federal rules and with local government regulations; and

(e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.

(3) If a petition requests the amendment or repeal of a rule, before denying a petition, the agency must invite public comment upon the rule, including whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses.

(4) The agency:

(a) May provide a copy of the petition, together with a copy of the applicable rules of practice, to all persons named in the petition;

(b) May schedule oral presentations;

(c) Shall, in writing, within 90 days after receipt of the petition, either deny the petition or initiate rulemaking proceedings.

Stat. Auth.: ORS 183.390

Stats. Implemented: ORS 183.390

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 1-1981, f. & ef. 11-17-81; JD 6-1983, f. 9-23-83, ef. 9-26-83; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95; DOJ 12-2003(Temp), f. & cert. ef. 10-10-03 thru 4-7-04; DOJ 13-2003, f. & cert. ef. 12-9-03; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

### **137-001-0080**

#### **Temporary Rulemaking Requirements**

(1) If no notice has been provided before adoption of a temporary rule, the agency shall give notice of its temporary rulemaking to persons, entities, and media specified under ORS 183.335(1) by mailing, electronic mailing, or personally delivering to each of them a copy of the rule or rules as adopted and a copy of the statements required under 183.335(5). The agency may provide a summary of the rule or rules and state how and where a copy of the rule or rules may be obtained on paper, via electronic mail or from a specified web site. If the agency posts the rule or rules on a web site, the agency must provide a web address or link sufficient to enable a person to find the rules easily. Failure to give this notice shall not affect the validity of any rule.

(2) Persons who have asked the agency to mail notices of proposed rulemaking to them pursuant to ORS 183.335(8) may choose to receive notice by mail, and not electronically.

(3) The agency shall file with the Secretary of State a certified copy of the temporary rule and a copy of the statement required by ORS 183.335(5).

(4) A temporary rule is effective for 180 days, unless a shorter period is specified in the temporary rule or the certificate of filing for the temporary rule.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.335(5), 183.341 & 183.355

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; 1AG 4-1979, f. & ef. 12-3-79; 1AG 1-1981, f. & ef. 11-17-81; JD 6-1983, f. 9-23-83, ef. 9-26-83; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 7-1995, f. 8-25-95, cert. ef. 1-1-96; DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 10-2007, f. 10-15-07 cert. ef. 1-1-08

### **137-001-0087**

#### **Objections to Statements of Fiscal Impact**

(1) An objection to a fiscal impact statement must be filed in writing and must:

(a) Identify the fiscal impact statement to which objection is made;

(b) Identify the persons likely to be affected by the proposed rule on whose behalf the objection is filed or, if filed by an association, assert the number of members of the association who are likely to be affected by the proposed rule;

(c) Explain how the persons identified are likely to be affected by the proposed rule;



(d) Explain the objection or objections to the fiscal impact statement; and

(e) Be sent to the mailing address or electronic mail address identified in the notice of proposed rulemaking for the submission of written comments.

(2) An objection to a fiscal impact statement is deemed made for purposes of ORS 183.333(5) when received by the agency.

(3) If the agency appoints a fiscal impact advisory committee, the agency shall make a good faith effort to ensure that the committee's members represent the interests of persons likely to be affected by the rule. The meetings of the fiscal impact advisory committee shall be open to the public.

(4) If the agency determines that the original fiscal impact statement does not adequately reflect the proposed rule's fiscal impact, the agency will file an amended fiscal impact statement, extend the comment period as required by ORS 183.333(5), and give notice of the extended comment period to:

(a) The persons or organizations that have filed objections under section one of this rule;

(b) The persons specified in the agency's notice rule adopted in accordance with ORS 183.335(1)(a);

(c) The persons on the agency's mailing list maintained in accordance with ORS 183.335(8); and

(d) Legislators specified in ORS 183.335(15).

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.333(5), 183.335(12)

Hist.: DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

### **137-001-0095**

#### **Statement of the Objective of Proposed Rules**

(1) A request for a statement of the agency's objective in proposing a rule must be submitted in writing and must identify the persons on whose behalf the request is made.

(2) Within ten days of receiving a request or requests for a statement of objective from at least five persons, the agency shall provide the statement, in writing, to the person or persons who submitted written requests. Failure to meet this deadline shall not affect the validity of any rule.

(3) The agency's written statement of the objective of the rule must include an explanation of how the agency will determine whether the rule accomplishes its objective.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.335(3)

Hist.: DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06

### **137-001-0100**

#### **Review of New Rules**

(1) When conducting a review of a new rule as required by ORS 183.405 the agency may appoint an advisory committee to assist with the review, invite public comment upon the rule, or both.

(2) Notwithstanding ORS 183.405(4) & (5), the agency may review any amended rule under the criteria set forth in ORS 183.405(1).

(3) As part of the review under ORS 183.405(1), the agency may invite public comment upon the rules and give notice of the review to those parties identified in ORS 183.335(1)(a), (c), and (d). The notice will:

(a) Identify the rule or rules under review, describe the subject matter of the rule or rules under review, and invite comments on any or all of the factors identified in ORS 183.405(1);

(b) State the date by which written comments must be received by the agency and the mailing address or electronic mail address to which the comments should be sent; and

(c) Include the time and place of the hearing, if the agency provides a public hearing to receive oral comments.

Stat. Auth.: ORS 183.341 & 183.502

Stats. Implemented: ORS 183.333, 183.341, 183.502 & 183.405

Hist.: DOJ 10-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 10-2007, f. 10-15-07 cert. ef. 1-1-08