

**GOVERNING BOARD MEETING  
OREGON DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES**

**December 11, 2017  
8:30 a.m.**

**Portland, OR**

**Public Meeting Agenda**

The Board makes every attempt to hold strictly to the sequence of the distributed agenda. Times and topics may change up to the last minute, but the times for public comment will be available as indicated below. This agenda is available on the DOGAMI website: [www.oregongeology.org](http://www.oregongeology.org).

- 8:30 a.m. Item 1: Call to Order – Chair Lisa Phipps**
- 8:35 a.m. Item 2: Introductions – Chair Lisa Phipps and staff**
- 8:40 a.m. Item 3: Election of Chair and Vice-Chair**  
Board Action: The Board will be asked to take an action on this item
- 8:50 a.m. Item 4: Confirm Dates and Locations for 2018 Board meetings**  
Board Action: The Board will be asked to take an action on this item
- 9:05 a.m. Item 5: Review Minutes of September 18, 2017**  
Board Action: The Board will be asked to take an action on this item
- 9:10 a.m. Item 6: Geologist Stamping/Signing Update – Holly Mercer, Policy Assistant**  
Briefing: The board will not be asked to take an action on this item
- 9:20 a.m. Item 7: Strategic Plan Update – Sherry Carter, DAS Human Resources & Ali Hansen, Communications Director**  
Briefing: The board will not be asked to take an action on this item
- 9:30 a.m. Item 8: Adoption of the Attorney General’s Model Rules of Procedure – Diane Lloyd, Assistant Attorney General**  
Board Action: The Board will be asked to take an action on this item
- 9:50 a.m. Item 9: Tsunami Line Update – Brad Avy, Director & Diane Lloyd, Assistant Attorney General**  
Briefing: The board may be asked to take an action on this item
- 10:10 a.m. Item 10: Public Comment**  
Three minutes limit per person unless otherwise specified at the meeting by the Chair
- 10:20 a.m. Break**

- 10:30 a.m. Item 11: Financial Report – Kim Riddell, Chief Financial Officer**  
Board Action: The board will be asked to take an action on this item
- 10:45 a.m. Item 12: MLRR Update – Ian Madin, Chief Scientist/Deputy Director**  
Briefing: The board will not be asked to take an action on this item
- 11:30 a.m. Item 13: GS&S Update – Jed Roberts, GS&S Manager**  
Briefing: The board will not be asked to take an action on this item
- 11:40 a.m. Item 14: Director’s Report – Brad Avy, Director**  
Briefing: The board will not be asked to take an action on this item
- 12:00 p.m. Item 15: Public Comment**  
(noon)  
Three minutes limit per person unless otherwise specified at the meeting by the Chair
- 12:10 p.m. Item 16: Board Adjourn**

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**PLEASE NOTE**

**AGENDA**

The Board meeting will begin at 8:30 am, and proceed chronologically through the agenda.

**PUBLIC TESTIMONY**

If you wish to give testimony on any item scheduled on this agenda, please sign up on the sheets provided on the day of the meeting and you will be called to testify by the Board Chair. The Board places great value on information received from the public. Persons desiring to testify or otherwise present information to the Board are encouraged to:

1. Provide written summaries of information to the Board (7 sets);
2. Limit testimony to 3 minutes, recognizing that substance, not length, determines the value of testimony or written information;
3. Endorse rather than repeat testimony of other witnesses; and
4. Designate one spokesperson whenever possible when groups or organizations wish to testify.

**THANK YOU FOR TAKING TIME TO PRESENT YOUR VIEWS**

If you bring written materials to the meeting, please provide seven (7) copies. If you have questions regarding this agenda, please contact Lori Calarruda at (971) 673-1537 or you may email her at [lori.calarruda@oregon.gov](mailto:lori.calarruda@oregon.gov)

**REASONABLE ACCOMMODATION OF DISABILITIES**

Reasonable accommodation, such as assisted hearing devices, sign language interpreters, and materials in large print or audiotape, will be provided as requested. In order to ensure availability, please contact the Director’s Office at (971) 673-1555 at least 72 hours prior to the meeting to make your request.

# Staff Report and Memorandum

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To: Chair, Vice-Chair, and members of the DOGAMI Governing Board

From: Brad Avy, Director

Date: November 29, 2017

Regarding: **Agenda Item 3 – Chair and Vice-Chair Election**

*Proposed Board Action: Elect Board Member \_\_\_\_\_ as Chair and Board Member \_\_\_\_\_ as Vice-Chair.*

# Staff Report and Memorandum

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To: Chair, Vice-Chair, and members of the DOGAMI Governing Board

From: Lori Calarruda, Executive Assistant

Date: November 29, 2017

**Regarding: Agenda Item 4 – Proposed 2018 Board Meeting Dates**

Below are the Proposed 2018 Board Meeting Dates.

Proposed dates:

**April 6, 2018 (Friday)** – alternate date is April 9, 2017 (Monday)

**July 16, 2018 (Monday)** – alternate date is July 20, 2017 (Friday)

[Board Workshop/Retreat – Sunday, July 15 or Saturday, July 21 or weekday(?)]

[Suggested locations to date: coast, coast-Newport]

**October 1, 2018 (Monday)** – alternate date is October 8, 2018 (Monday)

**December 10, 2018 (Monday)** – alternate date is December 3, 2018 (Monday)

***Proposed Board Action: The Proposed Board Meeting Dates be Approved/Approved as amended/Not Approved.***

# Staff Report and Memorandum

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To: Chair, Vice-Chair, and members of the DOGAMI Governing Board

From: Lori Calarruda, Executive Assistant

Date: November 30, 2017

**Regarding: Agenda Item 5 – Review Minutes of September 18, 2017**

Attached are draft Board Minutes from September 18, 2017.

***Proposed Board Action: The Board Minutes of September 18, 2017 be Approved/Approved as amended/Not Approved.***

**GOVERNING BOARD MEETING MINUTES  
OREGON DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES**

Monday, September 18, 2017  
12:00 p.m. (noon)  
*Springfield, Oregon*

**1) Call to Order:** (Lisa Phipps, Board Chair)

Chair Lisa Phipps called the meeting to order at 12:07 p.m. She thanked Board member Katie Jeremiah for hosting the meeting and site visit.

**2) Introductions:** (Lisa Phipps, Board Chair and staff)

Chair Phipps, Vice Chair Laura Maffei, and Board Members Scott Ashford and Katie Jeremiah were in attendance.

Department of Geology and Mineral Industries (DOGAMI) Staff in attendance:

Brad Avy, Director/State Geologist

Lori Calarruda, Recording Secretary/Executive Assistant

Ian Madin, Deputy Director/Chief Scientist

Alyssa Pratt, Fiscal Analyst

Ali Ryan Hansen, Communications Director

Bill Burns, Natural Hazards Section Supervisor

Nancy Calhoun, Geohazards Analyst

Bob Houston, Hydrocarbon & Metallic Ore Geologist

Bob Brinkmann, Hydrogeologist; Hydrocarbon/Geothermal Resources Geologist

Others in attendance:

Sherry Carter, DAS Human Resources (HR)

Diane Lloyd, Department of Justice (DOJ)

Bill Clingman, Lane Council of Governments

**3) Review Minutes of June 26, 2017:**

Chair Phipps asked if there were any changes to the minutes as presented. No changes.

Board Action: Ashford moved to approve the minutes of June 26, 2017 as submitted. Jeremiah seconded. Motion carried.

**4) MLRR Update:**

Ian Madin, Chief Scientist and Deputy Director presented his report on MLRR:

Madin stated there is a need for an emergency rule for oil and gas well plugging and abandoning procedures, which requires a vote. Laura Maffei recused herself from this emergency rule.

12

13 Madin stated the current rule requires a one hundred (100) foot cement plug at the bottom of the  
14 well that extends fifty (50) feet below the steel casing that lines the hole. The typical well  
15 construction today has the bottom of the casing already plugged with fifty to eighty (50-80) feet of  
16 cement. The new rule is to match what the sites currently do today, otherwise to comply with the  
17 current rule it would require them to drill everything out and try to replug the hole. Had the well  
18 been done with an open casing then the old rule would apply.  
19

20 Chair Phipps asked why DOGAMI can do an emergency ruling. Diane Lloyd said the administrative  
21 procedures allows temporary rulemaking to address situations where if there is sufficient  
22 justification, it can happen without a rulemaking public notice. The Agency files this justification for  
23 up to 180 days while they will work on a new permanent rule.  
24

25 Chair Phipps asked for clarification about the upper and lower piece that are part of the current rules.  
26 Madin explained if the lower piece is in place then they only need to do the upper piece. Madin said  
27 the urgency for this request is the drill rig is on site for another two weeks and it would cost them  
28 mobilization expenses to bring it back. The change only applies to what happens at open holes at  
29 the bottom of sealed casings, the other provisions of the rule remain in effect. Lloyd explained the  
30 Department has to approve their plan but the rules are restrictive and is unable to as written.  
31 Ashford asked how long the timing would be for the new rule. Madin said they have to start some  
32 rule writing in the next month or two and this would be added to it. Lloyd said there may be more  
33 rules that need to be updated.  
34

35 **Board Action: Jeremiah moved to adopt the proposed temporary rule language as stated. Ashford**  
36 **second. Motion carried.**  
37

38 Permitting Status:

39 Madin went through the permitting application status. The staff have made it through most of the  
40 backlog but the complicated sites will probably still be on the list. They are not doing field  
41 inspections to allow them to focus on the permitting. Currently the active permits are recent ones  
42 and the staff is making good progress on them. The staff will be tracking how long it takes to permit,  
43 how long they stay in the system and what the delays are to get a better idea where they are stuck in  
44 the process.  
45

46 Ashford said it would be helpful to find out where the permits take the longest. Madin said part of  
47 the backlog was started in 2012 by requiring a comprehensive review of each file before inspections  
48 were done. He said in almost every case there was something that had to be amended, which  
49 created that workload. Ashford asked what they do when they find the issues. Madin said they put  
50 them in a pile and are waiting for staff time to be able to do site visits on them. Ashford asked if the  
51 applicants are being delayed in getting the information needed back to staff. Madin said no, this is  
52 for existing permits only and staff are telling them what they need to do in the future on them.  
53

54 Maffei asked what the demarcation of the backlogs is and Madin said June of 2016. Jeremiah said  
55 she wants them to be cautious about the timeline for new applicants which could cost them money.  
56 Madin said they want to collect the information but without causing a delay. They want to make sure  
57 new applicants know what they need up front by doing a pre-application meeting.  
58

59 Business Model Review:

60 The staff have been working on a work flow process for a new application for an aggregate permit. It  
61 defines the procedure and helps them determine staffing needs and management needs. They want  
62 to do this for six to eight (6-8) of their other processes. Ashford asked if someone from outside the  
63 staff will be asked for input on the process. Madin said OWEB and Sherry Carter have offered to help  
64 go through it. They will send it out to a large group of stakeholders. The staff will be attending a  
65 mining meeting in Nevada. Jeremiah said this clarity will help new applicants.  
66

67 Oil and Gas – Tahe Well and Abandonment:

68 Madin said the Tahe well issue is part of the Enerfin site. The spacing rule states they are not  
69 supposed to drill two wells within 500 feet of each other and they are drilling within 350 feet. The  
70 Agency is working on scheduling a staff hearing at the beginning of November. This also shows that  
71 the rules needs to be changed, updated. Larry Knudsen has done a comprehensive review of existing  
72 rules and recommended changes. Chair Phipps asked what the recourse is if the affected party  
73 disagrees, and Lloyd said an appeal would go to circuit court. Phipps asked for an update on the  
74 outcome at the next meeting. Maffei asked if DOGAMI staff have done this before and who sits in on  
75 the hearing. Madin stated no this is the first time and it would be himself or Director Avy as the  
76 hearing officer.  
77

78 Permit Revocation:

79 The Agency is in the process of revoking an aggregate permit for failure to comply with several  
80 notices of violation. The complication is the permittee is no longer able to access the site due to a  
81 dispute with the landowner, so DOGAMI has to revoke it. It was referred to the Office of  
82 Administrative Hearings. There is a pre-hearing this week on it and this one would have the potential  
83 of coming back to the Board if appealed.  
84

85 Database Replacement Scoping:

86 Due to an inadequate database, the staff have been working with the CIO and ETS to get potential  
87 vendors to come in and talk with them to determine what their needs are. Madin said it might make  
88 more sense to do it internally and incrementally rather than buying a new system. He would like to  
89 avoid having to go to the legislature for money. There are other state agencies in the same boat so  
90 they might piggyback with them.  
91

92 Calico-Grassy Mountain:

93 Calico finished their exploratory drilling program DOGAMI approved and they seem to have found  
94 what they believe to be a significant amount of mineral.  
95

96 BLM Plan Submitted:

97 Calico submitted their plan of operations to the BLM. DOGAMI has an MOU with BLM on  
98 coordination of permitting.  
99

100 Preliminary Feasibility Study Underway:

101 Calico is undertaking the preliminary feasibility study, which is done first before the feasibility  
102 study. More analysis is being done to better understand the rock they are going to be mining.  
103

104 Application Anticipated Q1 2018:

105 Calico is still saying they are submitting an application in the first quarter of 2018. The Agency is  
106 operating under the assumption that is going to happen. The rule says they have one year to  
107 complete the application. Madin said it is more like fifteen (15) months so they need to start  
108 working on it now and it will require a lot of staff time.

109  
110 Permit Czar Recruitment:

111 The Agency wants to bring in a full time person to handle this alone and are also looking at a  
112 part-time administrative staff. Calico is paying for all of it. The big question is what happens  
113 after the permit is issued. The Agency needs to have a detailed monitoring and compliance plan  
114 that is part of the permit document to ensure Calico adheres to the permit conditions. Madin is  
115 going to see if the Agency can write it into the environmental assessment. The cost recovery  
116 agreement ends the day they issue the permit and then no money until the renewal fee a year  
117 later. Calico does not think DOGAMI needs to be involved in the oversight of the mine.

118  
119 Application Process Workshop:

120 DOGAMI wants to make sure the other agencies know what is expected on this application since  
121 it has never been done before. The staff is organizing a one-day workshop to review and  
122 determine what needs to happen, then follow up with a shorter meeting with the directors of  
123 the agencies to ensure they are all on the same page. Madin said there is a possibility all this  
124 work will be done and Calico will not come in with an application, but the agencies still need to  
125 be prepared.

126  
127 SB 644, HB 2202, and Rulemaking:

128 Madin believes SB 644 will require a fair amount of rulemaking to implement. There are major  
129 changes to how they permit aggregate sites and he thinks there will be a lot of people coming in on  
130 January 2, 2018 to take advantage of the new rules.

131  
132 Madin stated HB 2202 is from 2013. This new rule says that on Class 1 or 2 soils in the Willamette  
133 Valley that have enough gravel to make it a significant mineral resource they will need to mine all the  
134 material on their site safely.

135  
136 Jordan Cove:

137 This terminal is the last one standing of several that have been proposed. DOGAMI has been working  
138 on this for at least ten (10) years. Construction sites need to get a permit from DOGAMI which  
139 means Jordan Cove will need one but it will probably be the easiest one they have to get. He also  
140 said the Agency may need to permit the pipeline but they are waiting to hear from DOJ for an answer  
141 on this. Chair Phipps asked what makes DOGAMI think they will. Madin said he and Lloyd originally  
142 thought it would be exempt as a utility project but it may not be able to be considered that way  
143 because the plant is an industrial facility not supplying local communities with a service. Lloyd said  
144 utility is not defined. The Department of Energy has told DOGAMI that it is one project.

145  
146 Civil Penalties:

147 In February, SB 3 required them to have operating permits from every small time gold miner in  
148 Oregon, the question came up from legislators about compliance. Madin said the Agency received a  
149 memo from DOJ on how to invoke civil penalties and it is fairly easy. The Board can impose civil  
150 penalties or delegate it to the State Geologist. Madin said that for example, for operators who were

151 chronically late in paying renewal fees, civil penalties would DOGAMI to get the renewal fee and fine  
152 money to recover staff time required to get them to pay. Jeremiah said she wants to caution on the  
153 cost to manage contests and civil penalties for a revenue. Madin said they would be very cautious  
154 but they are limited on tools to get them in compliance. The Agency has several that are hard for  
155 staff to get compliant. Lloyd said DOGAMI cannot have a toothless process that will not allow the  
156 Agency to get the miners compliant.

157  
158 Briefing: **No Board Action Required.**

159  
160 **5) Financial Report:**

161 Alyssa Pratt, Fiscal Analyst, presented the budget status report as of September 8, 2017.

162  
163 The Board packet contains the 15-17 Budget Report as of September 8<sup>th</sup> in the previous and current  
164 proposed format versions. The handouts included 17-19 budget report as September 8<sup>th</sup> in the  
165 proposed format version, the projects list and the FAQ.

166  
167 Pratt said the 15-17 biennium does not completely close until December so there are two biennia  
168 currently running. She explained the difference between the two format versions and will take the  
169 Board's feedback back to Kim Riddell. Pratt explained one difference on the format is the indirects  
170 has been broken out. Jeremiah asked for clarification of the negative indirects line under General  
171 Fund and Pratt explained they are expenditures redistributed to federal and other funds. Director  
172 Avy suggested they get both formats for a few meetings to adjust to the new one.

173  
174 Pratt explained DOGAMI did not overspend or overdraw any federal monies, all expenditures they  
175 drew down. The Agency did not balance the previous biennias and so it was carrying forward a  
176 negative in federal funds. Starting in 19-21 the agency will finally be balanced on federal funds.  
177 Ashford asked if GS&S and MLRR are running on separate funds and Pratt said yes. Ashford asked for  
178 clarification on Attorney General's office/DOJ expenses and if the costs would be captured going  
179 forward. Pratt said the 17-19 estimated charges are educated guesses based on the last biennium.  
180 Jeremiah asked if in the Board packet could include an expanded definition of what each category  
181 would include. Pratt said she thought it was broken out by objects and not necessarily broken down  
182 by each specific type.

183  
184 Ashford had concerns about MLRR being broken out but wrapped into the overall agency budget.  
185 Madin stated in the 17-19 budget there is a complete financial firewall in place separating out the  
186 two parts of the agency and they cannot be mixed. Ashford and Jeremiah suggested that MLRR  
187 should be broken out and have a report by itself. Ashford asked if the agency uses this report to look  
188 at and manage the monthly expenses. Avy responded yes. Ashford had specific questions regarding  
189 MLRR expenses and Pratt explained she processes expenditures separately for GS&S and MLRR and  
190 works closely with DAS.

191  
192 The 17-19 budget report through August was discussed, focusing mainly on the General Fund and  
193 projections. Questions were asked on actuals and projections and why they do not match up. A  
194 question was asked on the formula R+OT-E. Pratt said "OT" stands for "other transfers", which she  
195 believes only happens at MLRR. Pratt will take questions back to Riddell and have her provide more  
196 explanation of the report at the next board meeting.

197

198 Board Action: Maffei moved to accept the Budget Status Report as presented along with  
199 suggestions to the format. Jeremiah seconded. Motion carried.

200  
201 **6) Key Performance Measures (KPM) 2017 Data Report:**

202 Madin said this is the first update report of the year and the Agency is not reporting on the new  
203 KPMs since they only have a few months of data. Madin stated customer service is down from 2016  
204 due to changes in how the data were collected. The Agency had twice as many responses this year  
205 but in the past it was only based on input received during a couple of meetings. This change included  
206 broadening our stakeholders and getting input from others.

207  
208 Madin stated the Governance portion is the Board's homework assignment. Phipps asked if the new  
209 KPMs and not having data available on them would cause concerns at higher levels. Madin said he  
210 had no concerns since LFO and the budget committee approved them and the Governor signed the  
211 budget. Chair Phipps said in the past they answered these particular questions individually and then  
212 collectively. The Board went through and responded to the list of fifteen (15) questions collectively;  
213 the answers will be submitted through the required process.

214  
215 Board Action: Maffei moved to accept the revisions to the 2017 Annual Progress Performance  
216 Report as presented/revised. Ashford seconded. Motion carried.

217  
218 **7) Public Comment:**

219 Chair Phipps asked for public comment. No public comment.

220  
221 **Break**

222  
223 **8) GS&S Update:**

224 Bill Burns, Natural Hazards Section Supervisor presented the GS&S Update on behalf of Jed Roberts.

225  
226 Burns provided an update on staff input regarding General Fund priorities.

227  
228 All the field staff have been enrolled in wilderness first aid training and should be certified by the end  
229 of October.

230  
231 The drones have been purchased and two employees have taken the 3-day training at OSU. A few  
232 administrative things still need to be done before the Agency can fly their first mission.

233  
234 The Agency has been very involved in the recent wildfires but typically have not been in the past.  
235 The city of Brookings asked for information on buildings and Jed Roberts received an email with a  
236 positive response on the information – "This layer is savings lives tonight." The Agency is trying to  
237 get its information into the right hands so other entities can use it.

238  
239 Briefing: **No Board Action Required.**

240  
241 **9) Director's Report:**

242 Director Avy presented his Director's Report on the following:

243

244 Agency Strategic Planning:

245 The Agency is responding to a request from DAS for a full agency strategic plan. The framework has  
246 already been done. There is an internal team of Agency staff engaged on it with Sherry Carter and  
247 they are working to distinguish how to develop the framework into plans. The plan is due at the first  
248 of year.

249  
250 Board Member Vacancies:

251 The Eastern OR position has been open since last spring and the coastal one is becoming vacant in  
252 November. Interviews are currently being done with candidates and there is potential for one or  
253 more being confirmed.

254  
255 Registered Geologist Stamping/Signing Update:

256 The Geologist Licensing Board is working toward consistency between agencies and private industry.  
257 Avy handed out a copy of the letter from the licensing board.

258  
259 Ashford asked if someone can be called a geologist without being registered. Avy stated if someone  
260 worked for a university in research or the federal government they could but if they were advertising  
261 themselves as a geologist for hire they are expected to be registered.

262  
263 Briefing: **No Board Action Required.**

264  
265 **10) Eugene Landslides Presentation:**

266 Bill Burns, Natural Hazards Section Supervisor gave the Eugene Landslides Presentation: Landslides  
267 are bad... But, we can reduce risk with science

268 In the last two years there have been one hundred twenty-five (125) landslides recorded with two (2)  
269 fatalities and ten (10) houses destroyed. The wildfires are setting Oregon up for more potential  
270 landslides.

271 Burns reviewed the different types of landslide. Aerial photography and lidar is used to identify  
272 landslides and then the staff go out in the field to verify. He said what has happened in the past  
273 helps to determine the future and the key is the process is done in collaboration with the community.

274 Burns talked about the Eugene Project Area, how it came to be and the City's willingness to use the  
275 data for planning. There are six hundred thirty-three (633) landslides in the area including recent and  
276 past ones.

277 Burns discussed how they are detailing the information in the hazards documentation, which includes  
278 awareness, education and planning.

279 Burns showed information on the specific landslide the group would be taking a tour of.

280 Ashford asked if they ground truth the landslides. Burns stated they go out collect more data to  
281 verify them and do confidences on them and rank them, which is all done by hand. Ashford asked if  
282 they have a bias to call it a landslide and confirm later. Burns said not if they think it is a low  
283 confidence of a landslide.

284  
285 Briefing: **No Board Action Required.**

286

287 **11) Public Comment:**

288 Chair Phipps asked for public comment. No public comment.

289

290 **12) Confirm Time and Date for next Meeting:**

291 The next meeting will be held on Monday, December 11, 2017 from 8:30am-1pm in the Portland  
292 Office.

293

294 **13) Safety Briefing on Site Specific Hazards Awareness:**

295 Katie Jeremiah provided a safety briefing on the site specific hazards awareness of the mine site  
296 being toured today. She discussed the site's background and provided information on the  
297 relationship with the community.

298

299 **14) Break and Assemble at Transportation:**

300 The group took a break and assembled for tour transportation.

301

302 **15) Travel to Landslide Site:**

303 The Board members and DOGAMI staff traveled to the 67<sup>th</sup> Street landslide site.

304

305 **16) Tour of Landslide Site and Travel to Mine Site(s):**

306 The Board members and DOGAMI staff toured the 67<sup>th</sup> Street landslide site, while Nancy Calhoun  
307 pointed out aspects from the Eugene Landslide Presentation given earlier in the afternoon. The  
308 group then traveled to the mine site for a tour.

309

310 **17) Tour of Mine Site(s):**

311 The Board members and DOGAMI staff toured the mine site located in Dexter, guided by  
312 Katie Jeremiah, co-owner of Aggregate Resource Industries, Inc.

313

314 **18) Board Adjourns at the End of the Tour:**

315 At the conclusion of the mine site tour, Chair Phipps adjourned the meeting at 4:30 p.m.

316

317 APPROVED

318

319

320

321 \_\_\_\_\_  
Lisa Phipps, Chair

322

# Staff Report and Memorandum

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To: Chair, Vice-Chair, and members of the DOGAMI Governing Board

From: Holly Mercer, Policy Assistant

Date: December 4, 2017

**Regarding: Agenda Item 6 – Geologist Stamping/Signature Update**

Policy Assistant Holly Mercer will provide an update on the Registered Geologist Stamping/Signing Project.

***Proposed Board Action: The Board will not be asked to take an action on this item.***

# Staff Report and Memorandum

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To: Chair, Vice-Chair, and members of the DOGAMI Governing Board

From: Sherry Carter, DAS Human Resources & Ali Hansen, Communications Director

Date: December 4, 2017

**Regarding: Agenda Item 7 – Strategic Plan Update**

Sherry Carter, with DAS Human Resources, and Communications Director Ali Hansen will provide an update on the strategic planning progress.

***Proposed Board Action: The Board will not be asked to take an action on this item.***

# Staff Report and Memorandum

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To: Chair, Vice-Chair, and members of the DOGAMI Governing Board

From: Diane M. Lloyd, Assistant Attorney General

Date: December 4, 2017

**Regarding: Agenda Item 8 – Adoption of the Attorney General’s Model Rules of Procedure**

Per Oregon Statute (ORS 183.341) the Attorney General prepares model rules of procedure that may be adopted by an agency by reference without following certain rule making procedures

Current Rule:

**632-001-0005  
Model Rules of Procedure**

(1) Pursuant to the provisions of ORS 183.341, the Board adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act effective September 15, 1997.

Staff recommend that the rule be amended to incorporate by reference the current version:

**632-001-0005  
Model Rules of Procedure**

(1) Pursuant to the provisions of ORS 183.341, the Board adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act effective [September 15, 1997] **January 31, 2012.**

***Proposed Board Action: The Board will be asked to take an action on this item.***

# Department of Geology and Mineral Industries

## Chapter 632

### Division 1 PROCEDURAL RULES

#### 632-001-0005 Model Rules of Procedure

(1) Pursuant to the provisions of ORS 183.341, the Board adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act effective September 15, 1997.

(2) Persons wishing to appeal department actions are to be guided by OAR 632-010, 632-015, 632-020, 632-030, 632-033, 632-035, or 632-037, depending on the action being appealed. The public should first approach department staff, the State Geologist, and finally the Board in seeking resolution of issues which do not fall under the above-cited rules.

**Statutory/Other Authority:** ORS 183.341, 197.180 & 517.740

**Statutes/Other Implemented:** ORS 516.090

**History:**

DGMI 2-1999, f. & cert. ef. 8-30-99

GMI 2-1995, f. & cert. ef. 3-10-95

GMI 1-1992, f. & cert. ef. 6-17-92

GMI 1-1986, f. & ef. 8-25-86

GMI 3-1985, f. & ef. 11-20-85

GMI 2-1984, f. & ef. 2-22-84

GMI 2-1981, f. & ef. 12-30-81

GMI 9, f. & ef. 12-13-76

GMI 6, f. 12-21-73, ef. 1-11-74

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## Department of Justice

### Chapter 137

#### Division 3

#### MODEL RULES OF PROCEDURE FOR CONTESTED CASES

##### **137-003-0000**

##### **Applicability of Rules in OAR 137, Division 3**

(1) An agency that does not use an administrative law judge assigned from the Office of Administrative Hearings to conduct contested case hearings for the agency may choose to adopt any or all of the Model Rules for Contested Cases in OAR 137-003-0000 to 137-003-0092 or in 137-003-0501 to 137-003-0700. The agency may adopt these rules by reference without complying with the rulemaking procedures under ORS 183.335. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355.

(2) When an administrative law judge assigned from the Office of Administrative Hearings conducts a contested case hearing for the agency, the proceedings shall be conducted pursuant to OAR 137-003-0501 to 137-003-0700, unless:

(a) The case is not subject to the procedural requirements for contested cases; or

(b) The Attorney General, by order, has exempted the agency or a category of the agency's cases from the application of such rules in whole or in part. These rules need not be adopted by the agency to be effective.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & OL 1999 & Ch. 849

##### **History:**

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

##### **137-003-0001**

##### **Contested Case Notice**

(1) The agency's contested case notice issued pursuant to ORS 183.415 shall include:

(a) A caption with the name of the agency and the name of the person or agency to whom the notice is issued;

(b) A short and plain statement of the matters asserted or charged and a reference to the particular sections of the statute and rules involved;

(c) A statement of the party's right to be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;

(d) A statement of the party's right to a hearing;

(e) A statement of the agency's authority and jurisdiction to hold a hearing on the matters asserted or charged; and

(f) Either:

(A) A statement of the procedure and time to request a hearing, the agency address to which a hearing request should be sent, and a statement that if a request for hearing is not received by the agency within the time stated in the notice the person will have waived the right to a hearing; or

(B) A statement of the time and place of the hearing.

(g) A statement indicating whether and under what circumstances an order by default may be entered.

(2) A contested case notice may include either or both of the following:

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(a) A statement that the record of the proceeding to date, including information in the agency file or files on the subject of the contested case and all materials submitted by the party, automatically becomes part of the contested case record upon default for the purpose of proving a prima facie case;

(b) A statement that a collaborative dispute resolution process is available as an alternative to a contested case hearing, if requested within the time period stated in the notice, and that choosing such a process will not affect the right to a contested case hearing if a hearing request is received by the agency within the time period stated in the notice and the matter is not resolved through the collaborative process.

**Statutory/Other Authority:** ORS 183.341 & 183.502

**Statutes/Other Implemented:** ORS 183.341(1), 183.413, 183.415(7), 183.502 & 2007 HB 2423

**History:**

DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

JD 3-1997, f. 9-4-97, cert. ef. 9-15-97

JD 1-1997, f. 3-28-97, cert. ef. 4-1-97

JD 7-1991, f. & cert. ef. 11-4-91

JD 1-1988, f. & cert. ef. 3-3-88

JD 2-1986, f. & ef. 1-27-86

1AG 4-1979, f. & ef. 12-3-79

1AG 17, f. & ef. 11-25-77

1AG 14, f. & ef. 10-22-75

**137-003-0002**

**Rights of Parties in Contested Cases**

(1) In addition to the information required to be given in writing under ORS 183.413(2) and 183.415(2) and (3), before commencement of a contested case hearing, the agency shall inform a party, if the party is an agency, corporation, or an unincorporated association, that such party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise. This information may be given in writing or orally.

(2) Unless otherwise precluded by law, the agency and the parties may agree to use alternative methods of dispute resolution in contested case matters. Such alternative methods of resolution may include arbitration or any collaborative method designed to encourage the agency and the parties to work together to develop a mutually agreeable solution, such as negotiation, mediation, use of a facilitator or a neutral fact-finder or settlement conferences, but may not include arbitration that is binding on the agency.

(3) Final disposition of contested cases may be by a final order following hearing or, unless precluded by law, by stipulation, agreed settlement, consent order or final order by default. A stipulation, agreed settlement or consent order disposing of a contested case must be in writing and signed by the party or parties. By signing such an agreement, the party or parties waive the right to a contested case hearing and to judicial review. The agency shall incorporate the disposition into a final order. A copy of any final order incorporating an agreement must be delivered or mailed to each party and, if a party is represented by an attorney, to the party's attorney.

**Statutory/Other Authority:** ORS 183.341 & 183.502

**Statutes/Other Implemented:** ORS 9.320, 183.341(1), 183.413, 183.415, 183.502 & 2007 HB 2423

**History:**

DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

JD 3-1997, f. 9-4-97, cert. ef. 9-15-97

JD 1-1997, f. 3-28-97, cert. ef. 4-1-97

JD 6-1995, f. 8-25-95, cert. ef. 9-9-95

JD 2-1986, f. & ef. 1-27-86

1AG 1-1981, f. & ef. 11-17-81

**137-003-0003**

**Late Filing**

(1)(a) When a party requests a hearing after the time specified by the agency but before entry of a final order by default or, if a final order by default is entered, on or before 60 calendar days after entry of the order, the agency may accept the late request only if the cause for failure to timely request the hearing was beyond the reasonable control of the party, unless other applicable statutes or agency rule provides a different timeframe or standard.

(b) If a final order by default has already been entered, the party requesting the hearing shall deliver or mail within a reasonable time a copy of the hearing request to all persons and agencies required by statute, rule or order to receive notice of the proceeding.

- (c) In determining whether to accept a late hearing request, the agency may require the request to be supported by an affidavit and may conduct such further inquiry, including holding a hearing, as it deems appropriate.
- (d) The agency by rule or in writing may provide a right to a hearing on whether the late filing of a hearing request should be accepted.
- (e) If the late hearing request is allowed by the agency, it shall enter an order granting the request and schedule a hearing on the underlying matter. If the late hearing request is denied, the agency shall enter an order setting forth its reasons for the denial.
- (f) Except as otherwise provided by law, if a final order by default has been entered, that order remains in effect during the agency's consideration of a late hearing request unless the final order is stayed under OAR 137-003-0090.
- (g) When a party requests a hearing more than 60 calendar days (or other time period set by statute) after the agency has entered a final order by default, the agency shall not grant the request unless a statute or agency rule permits the agency to consider the request.
- (2)(a) Unless otherwise provided by law, when a person fails to file any document, other than a hearing request, within the time specified by agency rules or these model rules of procedure, the late filing may be accepted if the agency or presiding officer determines that the cause for failure to file the document timely was beyond the reasonable control of the party.
- (b) The agency may require a statement explaining the reasons for the late filing.

**Statutory/Other Authority:** ORS 183.341  
**Statutes/Other Implemented:** ORS 183.341  
**History:**  
DOJ 9-2001, f. & cert. ef. 10-3-01  
JD 7-1991, f. & cert. ef. 11-4-91  
JD 5-1989, f. 10-6-89, cert. ef. 10-15-89

#### **137-003-0005**

##### **Participation as Party or Limited Party**

- (1) Persons who have an interest in the outcome of the agency's contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties.
- (2) A person requesting to participate as a party or limited party shall file a petition with the agency at least 21 calendar days before the date set for the hearing and shall include a sufficient number of copies of the petition for service on all parties. Petitions untimely filed shall not be considered unless the agency determines that good cause has been shown for failure to file timely.
- (3) The petition shall include the following:
- (a) Names and addresses of the petitioner and of any organization the petitioner represents;
- (b) Name and address of the petitioner's attorney, if any;
- (c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;
- (d) If the petitioner seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;
- (e) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest;
- (f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (3)(d) or (e) of this rule.
- (4) The agency shall serve a copy of the petition on each party personally or by mail. Each party shall have seven calendar days from the date of personal service or agency mailing to file a response to the petition.
- (5) If the agency determines under OAR 137-003-0003 that good cause has been shown for failure to file a timely petition, the agency at its discretion may:
- (a) Shorten the time within which responses to the petition shall be filed; or
- (b) Postpone the hearing until disposition is made of the petition.

(6) If a person is granted participation as a party or a limited party, the agency may postpone or continue the hearing to a later date if necessary to avoid an undue burden to one or more of the parties in the case.

(7) In ruling on petitions to participate as a party or a limited party, the agency shall consider:

(a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;

(b) Whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing;

(c) When a public interest is alleged, the qualifications of the petitioner to represent that interest;

(d) The extent to which the petitioner's interest will be represented by existing parties.

(8) A petition to participate as a party may be treated as a petition to participate as a limited party.

(9) If the agency grants a petition, the agency shall specify areas of participation and procedural limitations as it deems appropriate.

(10) An agency ruling on a petition to participate as a party or as a limited party shall be by written order and served promptly on the petitioner and all parties. If the petition is allowed, the agency shall also serve petitioner with the notice of rights required by ORS 183.413(2).

**Statutory/Other Authority:** ORS 183.341 & 183.390

**Statutes/Other Implemented:** ORS 183.341(1), 183.415(4) & 183.450(3)

**History:**

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

JD 7-1991, f. & cert. ef. 11-4-91

JD 5-1989, f. 10-6-89, cert. ef. 10-15-89

JD 1-1988, f. & cert. ef. 3-3-88

JD 2-1986, f. & ef. 1-27-86

1AG 4-1979, f. & ef. 12-3-79

1AG 17, f. & ef. 11-25-77

**137-003-0007**

**Agency Participation as Interested Agency or Party**

(1) When an agency gives notice that it intends to hold a contested case hearing, it may also notify the parties that it intends to name any other agency that has an interest in the outcome of that proceeding as a party or as an interested agency, either on its own initiative or upon request by that other agency.

(2) Each party shall have seven days from the date of personal service or mailing of the notice to file objections.

(3) The agency decision to name an agency as a party of as an interested agency shall be by written order and served promptly on the parties and the named agency.

(4) An agency named as a party or as an interested agency has the same procedural rights and shall be given the same notices as any party in the proceeding. An interested agency, unlike a party, has no right to judicial review.

(5) An agency may not be named as a party under this rule without written authorization of the Attorney General.

**Statutory/Other Authority:** ORS 180, 183.341 & 183.390

**Statutes/Other Implemented:** ORS 180.060, 180.220, 183.341(1) & 183.415(4)

**History:**

JD 7-1991, f. & cert. ef. 11-4-91

JD 2-1986, f. & ef. 1-27-86

**137-003-0008**

**Authorized Representative in Designated Agencies**

(1) For purposes of this rule, the following words and phrases have the following meaning:

(a) "Agency" means State Landscape Contractors Board, State Department of Energy and the Energy Facility Siting Council, Environmental Quality Commission and the Department of Environmental Quality; Insurance Division of the Department of Consumer and Business Services for proceedings in which an insured appears pursuant to ORS 737.505; the Department of Consumer and Business Services and any other agency for the purpose of proceedings to enforce the state building code, as defined by 455.010; the State Fire Marshal in the Department of State Police; Division of State Lands for proceedings regarding the issuance or denial of fill or removal permits under ORS 196.800 to 196.825; Public Utility Commission; Water Resources Commission and the Water Resources Department;

Land Conservation and Development Commission and the Department of Land Conservation and Development; State Department of Agriculture for purposes of hearings under 215.705; and the Bureau of Labor and Industries.

(b) "Authorized Representative" means a member of a partnership, an authorized officer or regular employee of a corporation, association or organized group, or an authorized officer or employee of a governmental authority other than a state agency;

(c) "Legal Argument" includes arguments on:

- (A) The jurisdiction of the agency to hear the contested case;
- (B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;
- (C) The application of court precedent to the facts of the particular contested case proceeding.

(d) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

- (A) The application of the statutes or rules to the facts in the contested case;
- (B) Comparison of prior actions of the agency in handling similar situations;
- (C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;
- (D) The admissibility of evidence; and
- (E) The correctness of procedures being followed in the contested case hearing.

(2) A party or limited party participating in a contested case hearing before an agency listed in subsection (1)(a) of this rule may be represented by an authorized representative as provided in this rule if the agency has by rule specified that authorized representatives may appear in the type of contested case hearing involved.

(3) Before appearing in the case, an authorized representative must provide the presiding officer with written authorization for the named representative to appear on behalf of a party or limited party.

(4) The presiding officer may limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to insure the orderly and timely development of the hearing records, and shall not allow an authorized representative to present legal argument as defined in subsection (1)(c) of this rule.

(5) When an authorized representative is representing a party or limited party in a hearing, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections may involve legal argument as defined in this rule, the presiding officer shall provide reasonable opportunity for the authorized representative to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

**Statutory/Other Authority:** ORS 183.457

**Statutes/Other Implemented:** ORS 183.341(1), & 183.457 & OL 1999, Ch. 448 & Ch. 599

**History:**

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

JD 6-1995, f. 8-25-95, cert. ef. 9-9-95

JD 6-1993, f. 11-1-93, cert. ef. 11-4-93

JD 7-1991, f. & cert. ef. 11-4-91

JD 1-1988, f. & cert. ef. 3-3-88

JD 4-1987(Temp), f. & ef. 7-22-87

**137-003-0010**

**Emergency License Suspension, Refusal to Renew**

(1) If the agency finds there is a serious danger to the public health or safety, it may, by order, immediately suspend or refuse to renew a license. For purposes of this rule, such an order is referred to as an emergency suspension order. An emergency suspension order must be in writing. It may be issued without prior notice to the licensee and without a hearing prior to the emergency suspension order.

(2)(a) When the agency issues an emergency suspension order, the agency shall serve the order on the licensee either personally or by registered or certified mail;

(b) The order shall include the following statements:

- (A) The effective date of the emergency suspension order;

(B) Findings of the specific acts or omissions of the licensee that violate applicable laws and rules and are the grounds for revocation, suspension or refusal to renew the license in the underlying proceeding affecting the license;

(C) The reasons the specified acts or omissions seriously endanger the public's health or safety;

(D) A reference to the sections of the statutes and rules involved;

(E) That the licensee has the right to demand a hearing to be held as soon as practicable to contest the emergency suspension order; and

(F) That if the demand for hearing is not received by the agency within 90 calendar days of the date of notice of the emergency suspension order the licensee shall have waived its right to a hearing regarding the emergency suspension order.

(3)(a) If timely requested by the licensee, the agency shall hold a hearing on the emergency suspension order as soon as practicable.

(b) The agency may combine the hearing on the emergency suspension order with any underlying agency proceeding affecting the license.

(c) At the hearing regarding the emergency suspension order, the agency shall consider the facts and circumstances including, but not limited to:

(A) Whether the acts or omissions of the licensee pose a serious danger to the public's health or safety; and

(B) Whether circumstances at the time of the hearing justify confirmation, alteration or revocation of the order.

**Statutory/Other Authority:** ORS 183.341 & 183.390

**Statutes/Other Implemented:** ORS 183.341(1) & 183.430

**History:**

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

JD 7-1991, f. & cert. ef. 11-4-91

JD 1-1988, f. & cert. ef. 3-3-88

JD 2-1986, f. & ef. 1-27-86

1AG 17, f. & ef. 11-25-77

1AG 14, f. & ef. 10-22-75

**137-003-0015**

**Use of Collaborative Dispute Resolution in Contested Cases Hearing**

(1) When an agency issues a contested case notice, the agency and a party may agree to participate in a collaborative dispute resolution (DR) process to resolve any issues relevant to the notice. Neither the party's request, nor any agreement by the agency, to participate in such a process tolls the period for filing a timely request for a contested case hearing.

(2) If the agency agrees to participate in a collaborative DR process, the agency may establish a deadline for the conclusion of the process.

(3) The agency and the party may sign an agreement containing any of the provisions listed in OAR 137-005-0030 or such other terms as may be useful to further the collaborative DR process.

(4) If the agency has agreed to participate in a collaborative DR process and the party makes a timely request for a contested case hearing:

(a) The hearing shall be suspended until the collaborative DR process is completed, the agency or the party opts out of the collaborative DR process, or the deadline, if any, for the conclusion of the collaborative process is reached.

(b) The agency shall proceed to schedule the contested case hearing if the collaborative DR process terminates without settlement of the contested case, unless the party withdraws the hearing request.

(5) Any informal disposition of the contested case shall be consistent with ORS 183.415(5) and OAR 137-003-0002 (4).

**Statutory/Other Authority:** ORS 183.341 & 183.502

**Statutes/Other Implemented:** ORS 183.502

**History:**

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

JD 3-1997, f. 9-4-97, cert. ef. 9-15-97

JD 1-1997, f. 3-28-97, cert. ef. 4-1-97

**137-003-0025****Discovery in Contested Cases Hearing**

(1) Discovery by the agency or any party may be permitted in appropriate contested cases at the discretion of the agency. Any party may petition the agency pursuant to the requirements in this rule for an order allowing discovery. Before requesting a discovery order, a party must seek the discovery through an informal exchange of information.

(2) Discovery may include but is not limited to one or more of the following methods:

(a) Depositions of a material witness;

(b) Disclosure of names and addresses of witnesses expected to testify at the hearing;

(c) Production of documents, which may but need not be limited to documents that the party producing the documents plans to offer as evidence;

(d) Production of objects for inspection;

(e) Permission to enter upon land to inspect land or other property;

(f) Requests for admissions;

(g) Written interrogatories;

(h) Prehearing conferences, as provided in OAR 137-003-0035.

(3)(a) A party seeking to take the testimony of a material witness by deposition shall file a written request with the agency, with a copy to all other parties. The request must include the name and address of the witness, a showing of the materiality of the witness's testimony, an explanation of why a deposition rather than informal or other means of discovery is necessary, and a request that the witness's testimony be taken before an individual named in the request for the purpose of recording testimony.

(b) For all other forms of discovery, a request for a discovery order must be in writing and must include a description of the attempts to obtain the requested discovery informally. The request must be mailed or delivered to the agency, with a copy to other parties.

(4) Any discovery request must be reasonably likely to produce information that is generally relevant to the case. If the relevance of the requested discovery is not apparent, the agency may require the party requesting discovery to explain how the request is likely to produce relevant information. If the request appears to be unnecessary, the agency may require an explanation of why the requested information is necessary or is likely to facilitate resolution of the case.

(5) The agency may, but is not required to, authorize the requested discovery. In making its decision, the agency shall consider any objections by the party from whom the discovery is sought. The agency shall issue an order granting or denying a discovery request in whole or in part.

(6) If the agency does authorize discovery, the agency shall control the methods, timing and extent of discovery. The agency may limit discovery to a list of witnesses and the principal documents upon which the agency and parties will rely;

(7) Only the agency may issue subpoenas in support of discovery. The agency may apply to the circuit court to compel obedience to a subpoena.

(8) The agency may delegate to a presiding officer its authority to order and control discovery. The delegation must be in writing, and it may be limited to specified forms of discovery.

(9) The presiding officer may refuse to admit evidence that was not disclosed in response to a discovery order, unless the party that failed to provide discovery offers a satisfactory reason for having failed to do so, or unless excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the presiding officer admits evidence that was not disclosed as ordered, the presiding officer may grant a continuance to allow an opportunity for the agency or other party to respond.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341(1), 183.415 & 183.425

**History:**

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

JD 3-1997, f. 9-4-97, cert. ef. 9-15-97

JD 7-1991, f. & cert. ef. 11-4-91

**137-003-0035****Prehearing Conferences**

(1) Prior to hearing, the agency may, in its discretion, conduct one or more prehearing conferences to facilitate the conduct and resolution of the case. The agency may convene the conference on its own initiative or at a party's request.

(2) The purposes of a prehearing conference may include, but are not limited to the following:

(a) To facilitate discovery and to resolve disagreements about discovery;

(b) To identify, simplify and clarify issues;

(c) To eliminate irrelevant issues;

(d) To obtain stipulations of fact;

(e) To provide to the presiding officer, agency and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;

(f) To authenticate documents;

(g) To decide the order of proof and other procedural matters pertaining to the conduct of the hearing;

(h) To discuss the use of a collaborative dispute resolution process in lieu of or preliminary to holding the contested case hearing; and

(i) To discuss settlement or other resolution or partial resolution of the case.

(3) The prehearing conference may be conducted in person or by telephone.

(4) The agency must make a record of any stipulations, rulings and agreements. The agency may make an audio or stenographic record of the pertinent portions of the conference or may place the substance of stipulations, rulings and agreements in the record by written summary. Stipulations to facts and to the authenticity of documents and agreements to narrow issues shall be binding upon the agency and the parties to the stipulation unless good cause is shown for rescinding a stipulation or agreement.

(5) After the hearing begins, the presiding officer may at any time recess the hearing to discuss any of the matters listed in section (2) of this rule.

(6) The agency may delegate to the presiding officer the discretion to conduct prehearing conferences.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341(1), 183.415(9) & 183.462

**History:**

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

JD 3-1997, f. 9-4-97, cert. ef. 9-15-97

JD 1-1997, f. 3-28-97, cert. ef. 4-1-97

JD 7-1991, f. & cert. ef. 11-4-91

### **137-003-0036**

#### **Individually Identifiable Health Information**

(1) This rule is intended to facilitate the issuance of a Qualified Protective Order (QPO) by an administrative tribunal in a contested case proceeding. The process described in this rule may be used by an agency or party to a contested case proceeding to request information from Covered Entities by using a QPO. This rule is intended to comply with federal requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA Privacy Rules in 45 CFR Parts 160 and 164 to protect the privacy of Protected Health Information. This rule should be construed to implement and not to alter the requirements of 45 CFR § 164.512(e).

(2) For purposes of this rule, capitalized terms used but not otherwise defined in this rule have the meaning given those terms in the HIPAA Privacy Rules in 45 CFR Parts 160 and 164.

(a) An agency or hearing officer who conducts a contested case hearing on behalf of an agency is an "administrative tribunal," as that term is used in 45 CFR § 164.512(e).

(b) The HIPAA Privacy Rules define "Covered Entity" to include the following entities, as further defined in the HIPAA Privacy Rules:

(A) A Health Insurer or the Medicaid program;

(B) A Health Care Clearinghouse; or

(C) A Health Care Provider that transmits any Individually Identifiable Health Information using Electronic Transactions covered by HIPAA.

(3) An administrative tribunal may issue a QPO at the request of a party, a Covered Entity, an Individual, or the agency.

(a) A request for a QPO may be accompanied by a copy of the subpoena, discovery request, or other lawful process that requests Protected Health Information from a Covered Entity.

(b) If the Individual has signed an authorization permitting disclosure of the Protected Health Information for purposes of the contested case proceeding, the administrative tribunal need not issue a QPO.

(4) A QPO is an order of the administrative tribunal that:

(a) Prohibits the use or disclosure of Protected Health Information by the agency or parties for any purpose other than the contested case proceeding or judicial review of the contested case proceeding;

(b) Requires that all copies of the Protected Health Information be returned to the Covered Entity or destroyed at the conclusion of the contested case proceeding, or judicial review of the contested case proceeding, whichever is later; and

(c) Includes such additional terms and conditions as may be appropriate to comply with federal or state confidentiality requirements that apply to the Protected Health Information.

(5) This rule addresses only the process for requesting a QPO from an administrative tribunal in a contested case hearing. This rule does not address any claims or defenses related to the admissibility or confidentiality of Protected Health Information for purposes of discovery or the hearing.

(6) The provisions of this rule do not supercede any other provisions of the HIPAA Privacy Rules that otherwise permit or restrict uses or disclosure of Protected Health Information without the use of a QPO.

(7) This rule applies to all contested cases that are either pending or initiated on or after April 14, 2003.

[Publications: Publications referenced are available from the agency.]

**Statutory/Other Authority:** ORS 183.341, HIPAA 1996, 45 CFR part 160 & 164

**Statutes/Other Implemented:** ORS 183.341 & OL 1999 & Ch. 849

**History:**

DOJ 2-2003, f. 3-19-03, cert. ef. 4-1-03

**137-003-0037**

**Qualified Interpreters**

(1) For purposes of this rule:

(a) An "assistive communication device" means any equipment designed to facilitate communication by an individual with a disability;

(b) An "individual with a disability" means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment;

(c) A "non-English speaking" person means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings;

(d) A "qualified interpreter" means:

(A) For an individual with a disability, a person readily able to communicate with the individual with a disability, interpret the proceedings and accurately repeat and interpret the statements of the individual with a disability to the presiding officer;

(B) For a non-English speaking person, a person readily able to communicate with the non-English-speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions. "Qualified interpreter" does not include a person who is unable to interpret the dialect, slang or specialized vocabulary used by the party or witness.

(2) If an individual with a disability is a party or witness in a contested case hearing:

(a) The presiding officer shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to, or to interpret the testimony of, the individual with a disability.

(b) No fee shall be charged to the individual with a disability for the appointment of an interpreter or use of an assistive communication device. No fee shall be charged to any person for the appointment of an interpreter or the

use of an assistive communication device if appointment or use is made to determine whether the person is disabled for purposes of this rule.

(3) If a non-English speaking person is a party or witness in a contested case hearing:

(a) The presiding officer shall appoint a qualified interpreter whenever it is necessary to interpret the proceedings to a non-English speaking party, to interpret the testimony of a non-English speaking party or witness, or to assist the presiding officer in performing the duties of the presiding officer.

(b) No fee shall be charged to any person for the appointment of an interpreter to interpret the testimony of a non-English speaking party or witness, or to assist the presiding officer in performing the duties of the presiding officer. No fee shall be charged to a non-English speaking party who is unable to pay for the appointment of an interpreter to interpret the proceedings to the non-English speaking party. No fee shall be charged to any person for the appointment of an interpreter if an appointment is made to determine whether the person is unable to pay or non-English speaking for the purposes of this rule.

(c) A non-English speaking party shall be considered unable to pay for an interpreter for purposes of this rule if:

(A) The party makes a verified statement and provides other information in writing under oath showing financial inability to pay for a qualified interpreter and provides any other information required by the agency concerning the inability to pay for such an interpreter; and

(B) It appears to the agency that the party is in fact unable to pay for a qualified interpreter.

(d) The agency may delegate to the presiding officer the authority to determine whether the party is unable to pay for a qualified interpreter.

(4) When an interpreter for an individual with a disability or a non-English speaking person is appointed or an assistive communication device is made available under this rule:

(a) The presiding officer shall appoint a qualified interpreter who is certified under ORS 45.291 if one is available unless, upon request of a party or witness, the presiding officer deems it appropriate to appoint a qualified interpreter who is not so certified.

(b) The presiding officer may not appoint any person as an interpreter if the person has a conflict of interest with any of the parties or witnesses, is unable to understand or cannot be understood by the presiding officer, party or witness, or is unable to work cooperatively with the presiding officer, the person in need of an interpreter or the representative for that person. If a party or witness is dissatisfied with the interpreter selected by the presiding officer, a substitute interpreter may be used as provided in ORS 45.275(5).

(c) If a party or witness is dissatisfied with the interpreter selected by the presiding officer, the party or witness may use any certified interpreter except that good cause must be shown for a substitution if the substitution will delay the proceeding.

(d) Fair compensation for the services of an interpreter or the cost of an assistive communication device shall be paid by the agency except, when a substitute interpreter is used for reasons other than cause, the party requesting the substitute shall bear any additional costs beyond the amount required to pay the original interpreter.

(5) The presiding officer shall require any interpreter for a person with a disability or a non-English speaking person to state the interpreter's name on the record and whether he or she is certified under ORS 45.291. If the interpreter is not certified under 45.291, the interpreter must state or submit his or her qualifications on the record and must swear or affirm to make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

(6) A person requesting an interpreter for a person with a disability or a non-English speaking person, or assistive listening device for an individual with a disability, must notify the agency or presiding officer as soon as possible, but no later than 14 calendar days before the proceeding, including the hearing or pre-hearing conference, for which the interpreter or device is requested.

(a) For good cause shown, the agency or presiding officer may waive the 14-day advance notice.

(b) Notification to the agency or presiding officer must include:

(A) The name of the person needing a qualified interpreter or assistive communication device;

(B) The person's status as a party or a witness in the proceeding; and

(C) If the request is in behalf of:

(i) An individual with a disability, the nature and extent of the individual's physical hearing or speaking impairment, and the type of aural interpreter, or assistive communication device needed or preferred; or

(ii) A non-English speaking person, the language spoken by the non-English speaking person.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & OL 1999, Ch. 1041 (SB 38), Ch. 849 & OL 2001 & Ch. 242 (SB 76)

**History:**

DOJ 9-2001, f. & cert. ef. 10-3-01

#### **137-003-0040**

##### **Conducting Contested Case Hearing**

- (1) The contested case hearing shall be conducted by and 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) If the presiding officer or any decision maker has an actual or potential conflict of interest as defined in ORS 244.020(1) or (14), that officer shall comply with the requirements of ORS Chapter 244 (e.g., ORS 244.120 and 244.130).
- (3) The hearing shall be conducted, subject to the discretion of the presiding officer, so as to include the following:
  - (a) The statement and evidence of the proponent in support of its action;
  - (b) The statement and evidence of opponents, interested agencies, and other parties; except that limited parties may address only subjects within the area to which they have been limited;
  - (c) Any rebuttal evidence;
  - (d) Any closing arguments.
- (4) Presiding officers or decision makers, agency representatives, interested agencies, and parties shall have the right to question witnesses. However, limited parties may question only those witnesses whose testimony may relate to the area or areas of participation granted by the agency.
- (5) The hearing may be continued with recesses as determined by the presiding officer.
- (6) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.
- (7) Exhibits shall be marked and maintained by the agency as part of the record of the proceedings.
- (8) If the presiding officer or any decision maker receives any written or oral ex parte communication on a fact in issue during the contested case proceeding, that person shall notify all parties and otherwise comply with the requirements of OAR 137-003-0055.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341(1), 183.415(9) & 183.462

**History:**

JD 6-1995, f. 8-25-95, cert. ef. 9-9-95

JD 7-1991, f. & cert. ef. 11-4-91

JD 2-1986, f. & ef. 1-27-86

1AG 4-1979, f. & ef. 12-3-79

1AG 14, f. & ef. 10-22-75

#### **137-003-0045**

##### **Telephone Hearings**

- (1) Unless precluded by law, the agency may, in its discretion, hold a hearing or portion of a hearing by telephone. Nothing in this rule precludes an agency from allowing some parties or witnesses to attend by telephone while others attend in person.
- (2) The agency may direct that a hearing be held by telephone upon request or on its own motion.
- (3) The agency shall make an audio or stenographic record of any telephone hearing.
- (4) If a hearing is to be held by telephone, each party and the agency shall provide, before commencement of the hearing, to all other parties and to the agency and hearing officer copies of the exhibits it intends to offer into evidence at the hearing. If a witness is to testify by telephone, the party or agency that intends to call the witness shall provide, before commencement of the hearing, to the witness, to the other parties and to the agency and hearing officer a copy of each document about which the witness will be questioned.
- (5) Nothing in this rule precludes any party or the agency from seeking to introduce documentary evidence in addition to evidence described in section (4) during the telephone hearing and the presiding officer shall receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to

conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the agency and to the other parties, the hearing may be continued upon the request of any party or the agency for sufficient time to allow the party or the agency to obtain and review the evidence.

(6) The agency may delegate to the presiding officer the discretion to rule on issues raised under this rule.

(7) As used in this rule, "telephone" means any two-way electronic communication device, including video conferencing.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341(1)

**History:**

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

JD 3-1997, f. 9-4-97, cert. ef. 9-15-97

JD 6-1993, f. 11-1-93, cert. ef. 11-4-93

**137-003-0050**

**Evidentiary Rules**

(1) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, and privileges afforded by Oregon law shall be recognized by the presiding officer.

(3) All offered evidence, not objected to, will be received by the presiding officer subject to the officer's power to exclude irrelevant, immaterial, or unduly repetitious matter.

(4) Evidence objected to may be received by the presiding officer. Rulings on its admissibility, if not made at the hearing, shall be made on the record at or before the time a final order is issued.

(5) The presiding officer shall accept an offer of proof made for excluded evidence. The offer of proof shall contain sufficient detail to allow the reviewing agency or court to determine whether the evidence was properly excluded. The presiding officer shall have discretion to decide whether the offer of proof is to be oral or written and at what stage in the proceeding it will be made. The presiding officer may place reasonable limits on the offer of proof, including the time to be devoted to an oral offer or the number of pages in a written offer.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341(1), 183.415 & 183.450

**History:**

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; 1AG 4-1979, f. & ef. 12-3-7; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD1-1988, 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 3-1997, f. 9-4-97, cert. ef. 9-15-97

**137-003-0056**

**Ex Parte Communications**

(1) An ex parte communication is an oral or written communication to an agency decision maker or the presiding officer not made in the presence of all parties to the hearing, concerning a fact in issue in the proceeding, but does not include communication from agency staff or counsel about facts in the record.

(2) If an agency decision maker or presiding officer receives an ex parte communication during the pendency of the proceeding, the officer shall:

(a) Give all parties notice of the substance of the communication, if oral, or a copy of the communication, if written; and

(b) Provide any party who did not present the ex parte communication an opportunity to rebut the substance of the ex parte communication at the hearing, at a separate hearing for the limited purpose of receiving evidence relating to the ex parte communication, or in writing.

(3) The agency's record of a contested case proceeding shall include:

(a) The ex parte communication, if in writing;

(b) A statement of the substance of the ex parte communication, if oral;

(c) The agency or presiding officer's notice to the parties of the ex parte communication; and

(d) Rebuttal evidence.

**Statutory/Other Authority:** ORS 183

**Statutes/Other Implemented:** ORS 173.341(1), 183.415(9) & 183.462

**History:**

JD 1-1988, f. & cert. ef. 3-3-88

JD 2-1986, f. & ef. 1-27-86

**137-003-0060**

**Proposed Orders in Contested Cases, Filing Exceptions**

(1) If a majority of the officials who are to render the final order in a contested case have neither attended the hearing nor reviewed and considered the record, and the order is adverse to a party, a proposed order including findings of fact and conclusions of law shall be served upon the parties.

(2) When the agency serves a proposed order on the parties, the agency shall at the same time or at a later date notify the parties:

(a) When written exceptions must be filed to be considered by the agency; and

(b) When and in what form argument may be made to the officials who will render the final order.

(3) After receiving exceptions and argument, if any, the agency may adopt the proposed order or prepare a new order.

(4) Nothing in this rule prohibits the staff of a non-party agency from commenting on the proposed order.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341(1), 183.460 & 183.464

**History:**

JD 3-1997, f. 9-4-97, cert. ef. 9-15-97

JD 7-1991, f. & cert. ef. 11-4-91

JD 2-1986, f. & ef. 1-27-86

JD 6-1983, f. 9-23-83, ef. 9-26-83

1AG 1-1981, f. & ef. 11-17-81

1AG 4-1979, f. & ef. 12-3-79

1AG 17, f. & ef. 11-25-75

1AG 14, f. & ef. 10-22-75

**137-003-0070**

**Final Orders in Contested Cases**

(1) Final orders in contested cases shall be in writing.

(2) Except as provided in section (3) of this rule, final orders in contested cases shall include the following:

(a) Rulings on admissibility of offered evidence when the rulings are not set forth in the record;

(b) Findings of fact — those matters that are either agreed as fact or that, when disputed, are determined by the factfinder, on substantial evidence, to be facts over contentions to the contrary. A finding must be made on each fact necessary to reach the conclusions of law on which the order is based;

(c) Conclusion(s) of law — applications of the controlling law to the facts found and the legal results arising therefrom;

(d) Order — the action taken by the agency as a result of the facts found and the legal conclusions arising therefrom; and

(e) A citation of the statutes under which the order may be appealed.

(3) When informal disposition of a contested case is made by stipulation, agreed settlement or consent order as provided in OAR 137-003-0002(3), the final order need not comply with section (2) of this rule. However, the order must state the agency action and:

(a) Incorporate by reference the stipulation or agreed settlement signed by the party or parties agreeing to that action; or

(b) Be signed by the party or parties and

(c) A copy must be delivered or mailed to each party and the attorney of record for each party that is represented.

(4) The date of service of the order on the parties shall be specified in writing and be part of or be attached to the order on file with the agency, unless service of the final order is not required by statute.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341(1), 183.415, 183.470 & 2007 HB 2423

**History:**

DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

JD 3-1997, f. 9-4-97, cert. ef. 9-15-97

JD 7-1991, f. & cert. ef. 11-4-91

JD 1-1988, f. & cert. ef. 3-3-88

JD 2-1986, f. & ef. 1-27-86

1AG 1-1981, f. & ef. 11-17-81

1AG 4-1979, f. & ef. 12-3-79

1AG 14, f. & ef. 10-22-75

**137-003-0075**

**Final Orders by Default**

(1) The agency may issue a final order by default.

(a) When the agency gave a party an opportunity to request a hearing and the party failed to request a hearing within the time allowed to make a request;

(b) When the party that requested a hearing withdraws the request;

(c) Except as provided in section (2) of this rule, when the agency notified the party of the time and place of the hearing and the party fails to appear at the hearing; or

(d) When the agency notified the party of the time and place of the hearing in a matter in which only one party is before the agency and that party subsequently notifies the agency that the party will not appear at the hearing, unless the agency agreed to reschedule the hearing.

(2) If the party failed to appear at the hearing and, before issuing a final order by default, the agency finds that the failure of the party to appear was caused by circumstances beyond the party's reasonable control, the agency may not issue a final order by default under section (1)(c) of this rule but shall schedule a new hearing.

(3) The agency may issue a final order that is adverse to a party by default only after making a prima facie case on the record. The agency must find that the record, including all materials submitted by the party, contains evidence that persuades the agency of the existence of facts necessary to support the order. If the record on default consists solely of an application and other materials submitted by the party, the order shall so note. The record shall be made at a scheduled hearing on the matter or, if the hearing is canceled or not held, at an agency meeting or at the time the final order by default is issued, unless the agency designates the agency file as the record at the time the contested case notice is issued in accordance with OAR 137-003-0001(1). The record includes all materials submitted by the party.

(4) The record may consist of transcribed, recorded or reported oral testimony or written evidence or both oral testimony and written evidence.

(5) The agency shall notify a defaulting party of the entry of a final order by default by delivering or mailing a copy of the order. If the contested case notice contained an order that was to become effective unless a party requested a hearing, and designated the agency file as the record for purposes of default, that order becomes a final order by default if no hearing is requested, and no further order need be served upon any party.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341(1), 183.415(6), 183.470 & 2007 HB 2423

**History:**

DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 9-2001, f. & cert. ef. 10-3-01

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

JD 6-1993, f. 11-1-93, cert. ef. 11-4-93

JD 7-1991, f. & cert. ef. 11-4-91

JD 2-1986, f. & ef. 1-27-86

**137-003-0080**

**Reconsideration and Rehearing — Contested Cases**

(1) A party may file a petition for reconsideration or rehearing of a final order in a contested case with the agency within 60 calendar days after the order is served. A copy of the petition shall also be delivered or mailed to all parties or other persons and agencies required by statute, rule, or order to receive notice of the proceeding.

(2) The petition shall set forth the specific grounds for reconsideration or rehearing. The petition may be supported by a written argument.

(3) A rehearing may be limited by the agency to specific matters.

(4) The petition may include a request for stay of a final order if the petition complies with the requirements of OAR 137-003-0090(2).

(5) The agency may consider a petition for reconsideration or rehearing as a request for either or both. The petition may be granted or denied by summary order and, if no action is taken, shall be deemed denied as provided in ORS 183.482.

(6) Within 60 calendar days after the order is served, the agency may, on its own initiative, reconsider the final order or rehear the case. If a petition for judicial review has been filed, the agency must follow the procedures set forth in ORS 183.482(6) before taking further action on the order. The procedural and substantive effect of reconsideration or rehearing under this section shall be identical to the effect of granting a party's petition for reconsideration or rehearing.

(7) Reconsideration or rehearing shall not be granted after the filing of a petition for judicial review, except in the manner provided by ORS 183.482(6).

(8) A final order remains in effect during reconsideration or rehearing until stayed or changed.

(9) Following reconsideration or rehearing, the agency shall enter a new order, which may be an order affirming the existing order.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341(1), 183.482(1) & (3)

**History:**

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

JD 7-1991, f. & cert. ef. 11-4-91

JD 5-1989, f. 10-6-89, cert. ef. 10-15-89

JD 2-1986, f. & ef. 1-27-86

1AG 1-1981, f. & ef. 11-17-81

1AG 17, f. & ef. 11-25-77

1AG 14, f. & ef. 10-22-75

**137-003-0090**

**Stay Request**

(1) Any person who submits a hearing request after a final order by default has been issued or petitions for reconsideration, rehearing or judicial review may request the agency to stay the enforcement of the agency order that is the subject of the petition.

(2) The stay request shall contain:

(a) The name, address and telephone number of the person filing the request and of that person's attorney, if any;

(b) The full title of the agency decision as it appears on the order and the date of the agency decision;

(c) A summary of the agency decision;

(d) The name, address, and telephone number of each other party to the agency proceeding. When the party was represented by an attorney in the proceeding, then the name, address, and telephone number of the attorney shall be provided and the address and telephone number of the party may be omitted;

(e) A statement advising all persons whose names, addresses and telephone numbers are required to appear in the stay request as provided in subsection (2)(d) of this rule, that they may participate in the stay proceeding before the agency if they file a response in accordance with OAR 137-003-0091 within ten days from delivery or mailing of the stay request to the agency;

(f) A statement of facts and reasons sufficient to show that the stay request should be granted because:

(A) The petitioner will suffer irreparable injury if the order is not stayed;

(B) There is a colorable claim of error in the order; and

(C) Granting the stay will not result in substantial public harm.

(g) A statement identifying any person, including the public, who may suffer injury if the stay is granted. If the purposes of the stay can be achieved with limitations or conditions that minimize or eliminate possible injury to other persons, petitioner shall propose such limitations or conditions. If the possibility of injury to other persons cannot be

eliminated or minimized by appropriate limitation or conditions, petitioner shall propose an amount of bond, irrevocable letter of credit or other undertaking to be imposed on the petitioner should the stay be granted, explaining why that amount is reasonable in light of the identified potential injuries;

(h) A description of additional procedures, if any, the petitioner believes should be followed by the agency in determining the appropriateness of the stay request;

(i) In a request for a stay of an order in a contested case, an appendix of affidavits containing evidence (other than evidence contained in the record of the contested case out of which the stay request arose) relied upon in support of the statements required under subsections (2)(f) and (g) of this rule. The record of the contested case out of which the stay request arose is a part of the record of the stay proceedings;

(j) In a request for stay of an order in other than a contested case, an appendix containing evidence relied upon in support of the statement required under subsections (2)(f) and (g) of this rule.

(3) The request must be delivered or mailed to the agency and on the same date a copy delivered or mailed to all parties identified in the request as required by subsection (2)(d) of this rule.

**Statutory/Other Authority:** ORS 183.341 & 183.390

**Statutes/Other Implemented:** ORS 183.341(1) & 183.482(3)

**History:**

DOJ 9-2001, f. & cert. ef. 10-3-01

JD 7-1991, f. & cert. ef. 11-4-91

JD 5-1989, f. 10-6-89, cert. ef. 10-15-89

JD 2-1986, f. & ef. 1-27-86

JD 6-1983, f. 9-23-83, ef. 9-26-83

**137-003-0091**

**Intervention In Stay Proceeding**

(1) Any party identified under OAR 137-003-0090(2)(d) desiring to participate as a party in the stay proceeding may file a response to the request for stay.

(2) The response shall contain:

(a) The full title of the agency decision as it appears on the order;

(b) The name, address, and telephone number of the person filing the response, except that if the person is represented by an attorney, then the name, address, and telephone number of the attorney shall be included and the person's address and telephone number may be deleted;

(c) A statement accepting or denying each of the statements of facts and reasons provided pursuant to OAR 137-003-0090(2)(f) in the petitioner's stay request;

(d) A statement accepting, rejecting, or proposing alternatives to the petitioner's statement on the bond, irrevocable letter of credit or undertaking amount or other reasonable conditions that should be imposed on petitioner should the stay request be granted.

(3) The response may contain affidavits containing additional evidence upon which the party relies in support of the statement required under subsections (2)(c) and (d) of this rule.

(4) The response must be delivered or mailed to the agency and to all parties identified in the stay request within ten days of the date of delivery or mailing to the agency of the stay request.

**Statutory/Other Authority:** ORS 183.341 & 183.390

**Statutes/Other Implemented:** ORS 183.341(1) & 183.482(3)

**History:**

JD 7-1991, f. & cert. ef. 11-4-91

JD 2-1986, f. & ef. 1-27-86

JD 6-1983, f. 9-23-83, ef. 9-26-83

**137-003-0092**

**Stay Proceeding and Order**

(1) The agency may conduct such further proceedings pertaining to the stay request as it deems desirable, including taking further evidence on the matter. Agency staff may present additional evidence in response to the stay request. The agency shall commence such proceedings promptly after receiving the stay request.

(2) The agency shall issue an order granting or denying the stay request within 30 calendar days after receiving it. The agency's order shall:

(a) Grant the stay request upon findings of irreparable injury to the petitioner and a colorable claim of error in the agency order and may impose reasonable conditions, including but not limited to, a bond, irrevocable letter of credit or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within a specified reasonable period of time; or

(b) Deny the stay request upon a finding that the petitioner failed to show irreparable injury or a colorable claim of error in the agency order; or

(c) Deny the stay request upon a finding that a specified substantial public harm would result from granting the stay, notwithstanding the petitioner's showing of irreparable injury and a colorable claim of error in the agency order; or

(d) Grant or deny the stay request as otherwise required by law.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341(1) & 183.482(3)

**History:**

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

JD 7-1991, f. & cert. ef. 11-4-91

JD 1-1988, f. & cert. ef. 3-3-88

JD 2-1986, f. & ef. 1-27-86

JD 6-1983, f. 9-23-83, ef. 9-26-83

**137-003-0501**

**Rules for Office of Administrative Hearings**

(1) OAR 137-003-0501 to 137-003-0700 apply to the conduct of all contested case hearings conducted for an agency by an administrative law judge assigned from the Office of Administrative Hearings unless:

(a) The case is not subject to the procedural requirements for contested cases; or

(b) The Attorney General, after consultation with the Chief Administrative Law Judge, has exempted the agency or a category of the agency's cases, by order, from the application of these rules in whole or in part.

(2) Any procedural rules adopted by the agency related to the conduct of hearings shall not apply to contested case hearings conducted for the agency by an administrative law judge assigned from the Office of Administrative Hearings unless required by state or federal law or specifically authorized by these rules or by order of the Attorney General.

(3) An agency may have rules specifying the time for requesting a contested case hearing, the permissible scope of the hearing and timelines for issuance of a proposed or final order. A request for hearing will be deemed to be a general denial of the matters alleged in the notice, unless a more specific response is required by statute or by agency rule. An agency rule establishing a different requirement for the response must be based on the agency's determination that, due to the complexity of the program or category of cases, a more specific response is warranted. Such rules should also provide parties the opportunity to amend their responses except when doing so would be unduly prejudicial. The amendments to this subsection apply to all hearing requests filed after January 31, 2012.

(4) Agencies with authority to assess the costs of an action or proceeding against a party may have rules specifying procedures related to assessment of costs.

(5) The agency's substantive rules, including those allocating the burden of proof, shall apply to all of its hearings.

(6) If permitted by law, the agency may delegate to an administrative law judge any of the agency's functions under these rules, including the authority to issue a final order. This delegation must be in writing and may be for a category of cases or on a case-by-case basis.

(7) For purposes of OAR 137-003-0501 to 137-003-0700, "good cause" exists when an action, delay, or failure to act arises from an excusable mistake, surprise, excusable neglect, reasonable reliance on the statement of a party or agency relating to procedural requirements, or from fraud, misrepresentation, or other misconduct of a party or agency participating in the proceeding.

(8) OAR 471-060-0005, Request for Change of Administrative Law Judge, applies to contested cases conducted by the Office of Administrative Hearings.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0505****Contested Case Notice**

(1) When the agency is required to issue a contested case notice pursuant to ORS 183.415, the notice shall include:

- (a) A caption with the name of the agency and the name of the person or agency to whom the notice is issued;
- (b) A short and plain statement of the matters asserted or charged and a reference to the particular sections of the statute and rules involved;
- (c) A statement of the party's right to be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;
- (d) A statement of the party's right to a hearing;
- (e) A statement of the authority and jurisdiction under which a hearing is to be held on the matters asserted or charged;
- (f) Either:
  - (A) A statement of the procedure and time to request a hearing, the agency address to which a hearing request should be sent, and a statement that if a request for hearing is not received by the agency within the time stated in the notice the person will have waived the right to a contested case hearing; or
  - (B) A statement of the time and place of the hearing;
- (g) A statement indicating whether and under what circumstances an order by default may be entered;
- (h) If the party is an agency, corporation, partnership, limited liability company, trust, government body or an unincorporated association, a statement that the party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise;
- (i) If the agency proposes a sanction, the sanction that the agency proposes based on the facts alleged in the notice. If the proposed sanction is not the maximum potential sanction, the agency may also state the maximum potential sanction for each violation and that the agency may impose up to the maximum potential sanction provided in the notice, without amending the notice; and,
- (j) Any other information required by law.

(2) A contested case notice may include either or both of the following:

- (a) A statement that the record of the proceeding to date, including information in the agency file or files on the subject of the contested case and all materials submitted by a party, automatically become part of the contested case record upon default for the purpose of proving a prima facie case;
- (b) A statement that a collaborative dispute resolution process is available as an alternative to a contested case hearing, if requested within the time period stated in the notice, and that choosing such a process will not affect the right to a contested case hearing if a hearing request is received by the agency within the time period stated in the notice and the matter is not resolved through the collaborative process.

(3) The notice requirements imposed in subsections (1)(h) and (1)(i) apply to all notices issued after January 31, 2012.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.413, 183.415, 183.630 & 183.675

**History:**

DOJ 6-2014, f. & cert. ef. 4-1-14

DOJ 4-2014(Temp), f. 1-31-14, cert. ef. 2-1-14 thru 7-31-14

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0510****Rights of Parties in Contested Cases**

(1) The agency may request the administrative law judge to provide to each party written notice of any or all of the information required to be given under ORS 183.413(2) before the commencement of the hearing. The administrative law judge shall provide any such written notice personally or by mail.

(2) Unless otherwise precluded by law, the party and the agency, if participating in the contested case hearing, may agree to use alternative methods of dispute resolution in contested case matters. Such alternative methods of resolution may include arbitration or any collaborative method designed to encourage the agency and the parties to

work together to develop a mutually agreeable solution, such as negotiation, mediation, use of a facilitator or a neutral fact-finder or settlement conferences, but may not include arbitration that is binding on the agency.

(3) Final disposition of contested cases may be by a final order following hearing or, unless precluded by law, by stipulation, agreed settlement, consent order or final order by default.

(4) A stipulation, agreed settlement or consent order disposing of a contested case must be in writing and signed by the party or parties. By signing such an agreement, the party or parties waive the right to a contested case hearing and to judicial review. The agency or administrative law judge shall incorporate the disposition into a final order. A copy of any final order incorporating an agreement must be delivered or mailed to each party and, if a party is represented by an attorney, to the party's attorney.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.413, 183.415, 183.630 & 183.675

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0515**

**Agency Referral to Office of Administrative Hearings**

(1) When referring a contested case to the Office of Administrative Hearings, the agency shall provide written notice of the referral to the Office of Administrative Hearings that includes the name of the agency and the name and address of each party and its counsel. The notice may also include the agency case number, the name and address of the agency staff person or the assigned assistant attorney general, if any, upon whom pleadings and other papers should be served, and any other information requested by the Office of Administrative Hearings.

(2) The agency referral notice must be accompanied by a copy of the agency's contested case notice in the case, a copy of any request for hearing and copies of motions or petitions filed with the agency and orders issued by the agency in the contested case.

(3) The agency shall provide a copy of the referral notice to each party or their counsel, if any. The agency may include additional copies of documents already sent to or received from the parties or their counsel with the copy of the referral notice.

(4) After a case has been referred by the agency to the Office of Administrative Hearings, the agency may withdraw the case from the Office of Administrative Hearings if the agency notifies the parties in writing that:

(a) The agency is withdrawing its contested case notice;

(b) All of the issues in the case have been resolved without the need to hold a hearing; or

(c) The agency has determined that it is not appropriate for the case to proceed to a hearing at that time and the reason therefor.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & OL 1999 & Ch. 849

**History:**

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

DOJ 9-2001, f. & cert. ef. 10-3-01

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0520**

**Filing and Providing Copies of Documents in Contested Case**

(1) Notwithstanding any other provision of these rules, a hearing request is considered filed when actually received by the agency.

(2) Unless otherwise provided by these rules, any documents filed for the record in the contested case shall be filed as follows:

(a) Before the case is referred by the agency to the Office of Administrative Hearings, with the agency;

(b) After the case is referred to the Office of Administrative Hearings and before the assigned administrative law judge issues a proposed order, with the administrative law judge;

(c) After the assigned administrative law judge issues a proposed order, with the agency, or with the administrative law judge if the administrative law judge will issue the final order or if the document is required to be filed with the administrative law judge pursuant to OAR 137-003-0650.

(3) The agency and the Office of Administrative Hearings shall refer any document to the correct entity.

(4) Filing may be accomplished by hand delivery, facsimile or mail or by any other method permitted by the agency or administrative law judge.

(5) A party or agency filing any document for the record shall at the same time provide copies of the documents to the agency and the parties, or their counsel if the agency or party is represented.

(6) The agency may by rule or in writing waive the right to receive copies of documents filed under this rule if the administrative law judge is authorized to issue the final order or if the agency is not a participant in the contested case hearing.

(7) Each party shall notify all other parties, the agency and the administrative law judge of any change in the party's address or withdrawal or change of the party's representatives, including legal counsel. If an attorney withdraws from representing a party, the attorney shall provide written notice of the withdrawal to the administrative law judge, all other parties and the agency, unless the agency has waived the right to receive notice.

(8) The agency shall notify all parties and the administrative law judge of any change in the agency's address or withdrawal or change of the agency's representatives, including legal counsel.

(9) Documents sent through the U.S. Postal Service to the agency, Office of Administrative Hearings or assigned administrative law judge shall be considered filed on the date postmarked. Documents sent by facsimile or hand-delivered are considered filed when received by the agency, Office of Administrative Hearings or assigned administrative law judge. If the agency permits or the administrative law judge directs alternative means of filing, the agency or the administrative law judge should determine when filing is effective for each alternative method permitted or directed.

(10) Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary.

(11) In computing any period of time prescribed or allowed by OAR 137-003-0501 through 137-003-0700, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the time period shall be included, unless it is a scheduled day of office closure, in which event the time period runs until the end of the next day that the office is open. Scheduled days of office closure include, but are not limited to, Saturdays and the legal holidays identified in ORS 187.010 and 187.020, including Sundays.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0525**

**Scheduling Hearings**

(1) Subject to the approval of the agency, the Office of Administrative Hearings or assigned administrative law judge shall:

(a) Set the date and time of the hearing, including a postponed or continued hearing;

(b) Determine the location of the hearing; and

(c) Determine whether cases shall be consolidated or bifurcated, except that, in accordance with OAR 137-003-0560 (5), emergency suspension hearings shall not be consolidated with any related agency proceedings affecting the license, unless the party agrees to the consolidation.

(2) Unless otherwise provided by law, the Office of Administrative Hearings or assigned administrative law judge may postpone or continue a hearing:

(a) For good cause; or

(b) By agreement of the parties and the agency, if the agency is participating in the hearing.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 9-2001, f. & cert. ef. 10-3-01

DOJ 2-2000, f. & cert. ef. 3-27-00

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0528**

**Late Hearing Requests**

(1)(a) The agency must accept a properly addressed hearing request that was not timely filed if it was postmarked within the time specified for timely filing, unless any of the following applies:

(A) A statute prohibits the agency from accepting it;

(B) The agency has adopted an administrative rule exempting itself from this requirement based on operational conflicts; or

(C) The agency receives the request 60 calendar days or more after the entry of the final order by default or other deadline established by applicable statute or agency rule.

(b) The agency may accept any other late hearing request only if:

(A) There was good cause for the failure to timely request the hearing, unless other applicable statutes or agency rules provide a different standard; and

(B) The agency receives the request before the entry of a final order by default or before 60 calendar days after the entry of the final order by default, unless other applicable statutes or agency rules provide a different timeframe.

(c) If a final order by default has already been entered, the party requesting the hearing shall deliver or mail within a reasonable time a copy of the hearing request to all persons and agencies required by statute, rule or order to receive notice of the proceeding.

(d) In determining whether to accept a late hearing request, the agency may require the request to be supported by an affidavit or other writing that explains why the request for hearing is late and may conduct such further inquiry as it deems appropriate.

(e) Before granting a party's late hearing request, the agency will provide all other parties, if any, an opportunity to respond to the late hearing request.

(f) The requirement imposed in subsection (1) of this rule and the good cause standard adopted in subsection (2) shall apply to hearing requests on notices issued after January 31, 2012.

(2) If a party files a request for a hearing that the agency finds is untimely and the party disputes the agency finding of the date that the request was received or postmarked or that the agency mailed or delivered the notice, then the agency will refer the matter to the Office of Administrative Hearings to provide a right to a hearing on that factual dispute. The administrative law judge will issue a proposed order recommending that the agency find that the hearing request is either timely filed or late.

(3) If the agency or another party disputes the facts contained in the explanation of why the request for hearing is late, the agency will provide a right to a hearing on the reasons why the hearing request is late. The administrative law judge will issue a proposed order recommending that the agency grant or deny the late hearing request.

(4) In addition to the right to a hearing provided in (2) and (3) of this rule, the agency by rule or in writing may provide in any case or class of cases a right to a hearing on whether the late filing of a hearing request should be accepted. If a hearing is held, it must be conducted pursuant to these rules by an administrative law judge from the Office of Administrative Hearings.

(5) If the late hearing request is allowed by the agency, the agency will enter an order granting the request and refer the matter to the Office of Administrative Hearings to hold a hearing on the underlying matter. If the late hearing request is denied by the agency, the agency shall enter an order setting forth reasons for the denial.

(6) Except as otherwise provided by law, if a final order by default has been entered, that order remains in effect during consideration of a late hearing request unless the final order is stayed under OAR 137-003-0690.

(7) When a party requests a hearing more than 60 calendar days (or other time period set by statute) after the agency or administrative law judge has entered a final order by default, the agency shall not grant the request unless a statute or agency rule permits the agency to consider the request.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

DOJ 9-2001, f. & cert. ef. 10-3-01

**137-003-0530**

**Late Filing and Amendment of Documents**

(1) Unless otherwise provided by law, when a party or agency fails to file any document for the contested case proceeding, except a hearing request, within the time specified by agency rules or these rules of procedure, the late filing may be accepted if the agency or administrative law judge determines that there was good cause for failure to file the document within the required time.

(2) The decision whether a late filing will be accepted shall be made:

(a) By the agency if OAR 137-003-0520 requires the document to be filed with the agency; or

(b) By the administrative law judge if OAR 137-003-0520 requires the document to be filed with the Office of Administrative Hearings or the assigned administrative law judge.

(3) The agency or administrative law judge may require a statement explaining the reasons for the late filing.

(4) Notwithstanding any other provision of these rules, after the notice required by ORS 183.415 is issued:

(a) An agency may issue an amended notice:

(A) Before the hearing; or,

(B) During the hearing, but before the evidentiary record closes, if the administrative law judge determines that permitting the amendment will not unduly delay the proceeding or unfairly prejudice the parties.

(b) If an agency issues an amended notice, any party may obtain, upon request, a continuance determined to be reasonably necessary to respond to any new material contained in the amended notice. This subsection ((4)(b)) does not apply to implied consent proceedings conducted pursuant to ORS Chapter 813. The amendments to subsection (4) of this rule apply to all notices issued after January 31, 2012.

(5) Unless otherwise provided by law, when a party or agency files any document for the contested case proceeding, the agency or the administrative law judge may permit the party or agency to file an amended document if the agency or administrative law judge determines that permitting the amendment will not unduly delay the proceeding or unfairly prejudice the parties or the agency.

(6) The decision whether an amended document will be accepted shall be made:

(a) By the agency if OAR 137-003-0520(2) requires the document to be filed with the agency; or

(b) By the administrative law judge if OAR 137-003-0520(2) requires the document to be filed with the Office of Administrative Hearings or the assigned administrative law judge.

(7) The agency or administrative law judge may require a statement explaining the reasons for the amendment.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

DOJ 9-2001, f. & cert. ef. 10-3-01

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0535**

**Participation as Party or Limited Party**

(1) The agency may by rule or in writing identify persons or entities who shall be parties or limited parties.

(2) Persons who have an interest in the outcome of the agency's contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties. Unless otherwise provided by

law, a person requesting to participate as a party or limited party shall file a petition with the agency and shall include a sufficient number of copies of the petition for service on all parties.

(3) The petition shall be filed at least 21 calendar days before the date set for the hearing, unless the agency by rule has set a different deadline or unless the agency and the parties agree to a different deadline. Petitions untimely filed shall not be considered unless the agency determines that good cause has been shown for failure to file within the required time.

(4) The petition shall include the following:

(a) Names and addresses of the petitioner and of any organization the petitioner represents;

(b) Name and address of the petitioner's attorney, if any;

(c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;

(d) If the petitioner seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;

(e) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest;

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (4)(d) or (e) of this rule.

(5) The agency shall serve a copy of the petition on each party personally or by mail. Each party shall have seven calendar days from the date of personal service or agency mailing to file a response to the petition.

(6) If the agency determines under OAR 137-003-0530 that good cause has been shown for failure to file a timely petition, the agency at its discretion may:

(a) Shorten the time within which responses to the petition shall be filed; or

(b) Postpone the hearing until disposition is made of the petition.

(7) If a person is granted participation as a party or a limited party, the hearing may be postponed or continued to a later date if necessary to avoid an undue burden to one or more of the parties in the case.

(8) In ruling on petitions to participate as a party or a limited party, the agency shall consider:

(a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;

(b) Whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing;

(c) When a public interest is alleged, the qualifications of the petitioner to represent that interest;

(d) The extent to which the petitioner's interest will be represented by existing parties.

(9) The agency may treat a petition to participate as a party as if it were a petition to participate as a limited party.

(10) If the agency grants a petition, the agency shall specify areas of participation and procedural limitations as it deems appropriate.

(11) An agency ruling on a petition to participate as a party or as a limited party shall be by written order and served promptly on the petitioner, all parties and the Office of Administrative Hearings or assigned administrative law judge. If the petition is allowed, the agency shall also provide petitioner with the notice of rights required by ORS 183.413(2) or request the administrative law judge to do so.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.415(4), 183.450(3) & OL 1999 & Ch. 849

**History:**

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0540**

**Agency Participation as Interested Agency or Party**

(1) At any time after an agency refers a contested case to the Office of Administrative Hearings, the agency may also notify the parties that it intends to name any other agency that has an interest in the outcome of that proceeding as a party or as an interested agency, either on its own initiative or upon request by that other agency.

(2) Each party shall have seven calendar days from the date of service of the notice to file objections. The agency may establish a shorter or longer period of time for filing objections.

(3) The agency decision to name an agency as a party or as an interested agency shall be by written order and served promptly on the parties, the named agency and the Office of Administrative Hearings or assigned administrative law judge.

(4) An agency named as a party or as an interested agency has the same procedural rights and shall be given the same notices as any party in the proceeding. An interested agency, unlike a party, has no right to judicial review.

(5) An agency may not be named as a party under this rule without written authorization of the Attorney General.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 180.060, 180.220, 183.341, 183.415(4) & OL 1999 & Ch. 849

**History:**

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0545**

**Representation of Agency by Attorney General or Agency Representative**

(1) An agency may be represented at a contested case hearing by the Attorney General.

(2) An agency may be represented at a contested case hearing by an officer or employee of the agency if the Attorney General has consented to that representation in a particular hearing or class of hearings and the agency, by rule, has authorized an agency representative to appear on its behalf in the particular type of contested case hearing involved.

(3) The administrative law judge shall not allow an agency representative appearing under section (2) of this rule to present legal argument as defined in this rule.

(a) "Legal Argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(4) If the administrative law judge determines that statements or objections made by an agency representative appearing under section (2) involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the agency representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(5) An agency representative appearing under section (2) must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings dated June 1, 2011, as amended October 1, 2011, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.452 & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0550****Representation of Parties; Out-of-state Attorneys**

(1) Natural persons who are parties in a contested case may represent themselves or may be represented by an attorney or other representative as authorized by federal or state law, including ORS 183.458.

(2) Corporations, partnerships, limited liability companies, unincorporated associations, trusts and government bodies must be represented by an attorney except as provided in OAR 137-003-0555 or as otherwise authorized by law.

(3) Unless otherwise provided by law, an out-of-state attorney may not represent a party to a contested case unless the out-of-state attorney is granted permission to appear in the matter pursuant to Oregon Uniform Trial Court Rule 3.170. Local counsel who obtained the order on behalf of the out-of-state attorney must participate meaningfully in the contested case in which the out-of-state attorney appears.

(4) Even if section (2) applies, a request for hearing will not be deemed to be invalid solely because it was not signed by a person licensed to practice law in Oregon as long as an attorney ratifies the request, in writing, within 28 days of the date that the request was received by the agency. The filing date will be determined by the date the hearing request was received, not by the ratification date. This requirement applies to hearing requests received after January 31, 2012.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 9.320, 183.341, 183.458 & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 9-2001, f. & cert. ef. 10-3-01

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0555****Authorized Representative of Parties Before Designated Agencies**

(1) For purposes of this rule, the following words and phrases have the following meaning:

(a) "Agency" means State Landscape Contractors Board, Office of Energy and the Energy Facility Siting Council, Environmental Quality Commission and the Department of Environmental Quality; Insurance Division of the Department of Consumer and Business Services for proceedings in which an insured appears pursuant to ORS 737.505; the Department of Consumer and Business Services and any other agency for the purpose of proceedings to enforce the state building code, as defined by 455.010; the State Fire Marshal in the Department of State Police; Division of State Lands for proceedings regarding the issuance or denial of fill or removal permits under 196.800 to 196.990; Public Utility Commission; Water Resources Commission and the Water Resources Department; Land Conservation and Development Commission and the Department of Land Conservation and Development; State Department of Agriculture for purposes of hearings under 215.705; and the Bureau of Labor and Industries.

(b) "Authorized Representative" means a member of a partnership, an authorized officer or regular employee of a corporation, association or organized group, an authorized officer or employee of a governmental authority other than a state agency or other authorized representatives recognized by state or federal law;

(c) "Legal Argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(C) The application of court precedent to the facts of the particular contested case proceeding.

(d) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(2) A party or limited party participating in a contested case hearing before an agency listed in subsection (1)(a) of this rule may be represented by an authorized representative as provided in this rule if the agency has by rule specified that authorized representatives may appear in the type of contested case hearing involved.

(3) Before appearing in the case, an authorized representative must provide the administrative law judge with written authorization for the named representative to appear on behalf of a party or limited party.

(4) The administrative law judge may limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to insure the orderly and timely development of the hearing records, and shall not allow an authorized representative to present legal argument as defined in subsection (1)(c) of this rule.

(5) When an authorized representative is representing a party or limited party in a hearing, the administrative law judge shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections may involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the authorized representative to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

(6) An authorized representative must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings dated June 1, 2011, as amended October 1, 2011, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.457 & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0560**

**Emergency License Suspension, Refusal to Renew**

(1) If the agency finds there is a serious danger to the public health or safety, it may, by order, immediately suspend or refuse to renew a license. For purposes of this rule, such an order is referred to as an emergency suspension order. An emergency suspension order must be in writing. It may be issued without prior notice to the licensee and without a hearing prior to the emergency suspension order.

(2)(a) When the agency issues an emergency suspension order, the agency shall serve the order on the licensee either personally or by registered or certified mail;

(b) The order shall include the following statements:

(A) The effective date of the emergency suspension order;

(B) Findings of the specific acts or omissions of the licensee that violate applicable laws and rules and are the grounds for revocation, suspension or refusal to renew the license in the underlying proceeding affecting the license;

(C) The reasons the specified acts or omissions seriously endanger the public's health or safety;

(D) A reference to the sections of the statutes and rules involved;

(E) That the licensee has the right to demand a hearing to be held as soon as practicable to contest the emergency suspension order; and

(F) That if the demand for hearing is not received by the agency within 90 calendar days of the date of notice of the emergency suspension order the licensee shall have waived its right to a hearing regarding the emergency suspension order.

(3) If the licensee files a timely request, the matter shall be referred to the Office of Administrative Hearings, the hearing on an emergency suspension held, and the order issued as soon as practicable, and, unless a delay is explained in the final order as required by subsection (7) of this rule, in no event later than:

(a) Within seven calendar days of receiving a timely request for hearing, the agency shall refer the matter to the Office of Administrative Hearings to hold a hearing on the emergency suspension order;

(b) Within 30 calendar days of receiving a referral for a hearing on an emergency suspension order, the Office of Administrative Hearings shall complete the hearing and close the evidentiary record;

(c) Within 15 calendar days of the close of the evidentiary record in the hearing, the Office of Administrative Hearings shall issue a proposed order or a final order, if the agency has delegated authority to issue a final order;

(d) Within 15 calendar days of receiving a proposed order from the Office of Administrative Hearings, the agency shall issue a final order.

(4) The time limits established in section (3) of this rule may be waived or extended with the agreement of the agency and the licensee.

(5) The hearing on the emergency suspension order may be combined with any related agency proceeding affecting the license only with the agreement of the party.

(6) At the hearing regarding the emergency suspension order, the administrative law judge shall consider the facts and circumstances including, but not limited to:

(a) Whether the acts or omissions of the licensee pose a serious danger to the public health or safety; and

(b) Whether circumstances at the time of the hearing justify confirmation, alteration or revocation of the order.

(7) The administrative law judge shall issue a proposed order consistent with OAR 137-003-0645 unless the administrative law judge has authority to issue a final order without first issuing a proposed order. Any proposed order shall contain a recommendation whether the emergency suspension order should be confirmed, altered or revoked. The final order shall be consistent with 137-003-0665 and shall be based upon the criteria in section (6) of this rule. If any of the deadlines specified in section (3) of this rule are not met, the final order shall state the reason.

(8) The amendments to this rule apply to all emergency suspension orders issued after January 31, 2012.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, ORS 183.430 & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0565**

**Use of Collaborative Dispute Resolution in Contested Case Hearing**

(1) When an agency issues a contested case notice, the party(ies) and the agency, if participating in the contested case hearing, may agree to participate in a collaborative dispute resolution (DR) process to resolve any issues relevant to the notice. Neither a party's request, nor any agreement by the agency, to participate in such a process tolls the period for filing a timely request for a contested case hearing.

(2) The agency, if participating in the contested case hearing, or the administrative law judge, if the agency is not participating in the contested case hearing, may establish a deadline for the conclusion of the collaborative DR process.

(3) The participants in the collaborative DR process may sign an agreement containing any of the provisions listed in OAR 137-005-0030 or such other terms as may be useful to further the collaborative DR process.

(4) If the party(ies), and the agency if participating in the contested case hearing, have agreed to participate in a collaborative DR process and a party makes a timely request for a contested case hearing, the hearing shall be suspended until the collaborative DR process is completed, the agency or the party opts out of the collaborative DR process, or the deadline, if any, for the conclusion of the collaborative process is reached.

(5) Collaborative dispute resolution may occur at any time before issuance of a final order. Any informal disposition of the contested case shall be consistent with ORS 183.415(5) and OAR 137-003-0510(4).

**Statutory/Other Authority:** ORS 183.341 & 183.502

**Statutes/Other Implemented:** ORS 183.341, 183.415(5) & 183.502

**History:**

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0566**

**Discovery in Contested Case Hearing — Methods**

(1) Before the hearing, upon request by the agency or by a party, the agency and each party must provide:

(a) The names, telephone numbers, and addresses of witnesses expected to testify at the hearing, except rebuttal witnesses;

(b) Documents that the party or agency plans to offer as evidence;

(c) Objects for inspection, if the party or agency plans to offer the objects as evidence;

(d) Responses to no more than 20 requests for admission (each subpart to count as a separate request) unless otherwise authorized, limited, or prohibited by the administrative law judge; and,

(e) Responses to no more than 20 written interrogatories (each subpart to count as a separate interrogatory), unless otherwise authorized, limited, or prohibited by the administrative law judge.

(2) An agency may provide by rule that some or all discovery methods under this section do not apply to a specified program or category of cases if it finds that the availability of discovery would unduly complicate or interfere with the hearing process in the program or cases, because of the volume of the applicable caseload and the need for speed and informality in that process, and that alternative procedures for the sharing of relevant information are sufficient to ensure the fundamental fairness of the proceedings.

(3) An agency may, by rule, limit a party's ability to obtain discovery from the agency when the agency merely is providing a forum for the parties and is not an active participant in the case.

(4) This rule is not intended to limit or otherwise conflict with a party's statutory right to obtain public records upon request. If a party knows or expects that a public record request relates to the proceeding, the party shall provide a copy of the public record request to the attorney or representative for the agency at the time the request is made.

(5) This rule is not intended to limit or otherwise conflict with the statutory authority, if any, of the agency to investigate.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & 183.630

**History:**

Renumbered from 137-003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0567**

**Discovery in Contested Case Hearing — Standard**

Any discovery request must be reasonably likely to produce information that is generally relevant and necessary to the case, or is likely to facilitate resolution of the case.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & 183.630

**History:**

Renumbered from 137-003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0568**

**Discovery in Contested Case Hearing — Procedure**

(1) Before filing a motion for an order requiring discovery, a party or the agency must make a good faith effort to obtain the information from the party, agency or person who has the information, unless the effort would pose a risk to any person or would be futile.

(2) A motion for an order requiring discovery should be filed with and decided by the agency or the administrative law judge, as required by OAR 137-003-0520(2) and 137-003-0630.

(3) Any party seeking an order from the administrative law judge requiring discovery shall send a copy of the motion to the agency, unless the agency has waived notice, and to all other parties. If the agency seeks an order requiring discovery, the agency shall send a copy of the motion to all parties. A request for an order requiring discovery must include a description of the attempts to obtain the requested discovery informally, or an explanation why no such attempt was made, and an explanation of how the discovery is likely to produce information that is generally relevant and necessary to the case.

(4) The agency or the administrative law judge may authorize the requested discovery if the agency or the administrative law judge determines that the requested discovery is reasonably likely to produce information that is generally relevant to the case and necessary or likely to facilitate resolution of the case. Upon request of a party, a witness, or the agency, the agency or the administrative law judge may deny, limit, or condition discovery to protect any party, any witness, or the agency from annoyance, embarrassment, oppression, undue burden or expense, or to limit the public disclosure of information that is confidential or privileged by statute or rule. In making a decision, the agency or administrative law judge shall consider any objections by the party, the witness or the agency from whom the discovery is sought.

(5) If the agency or the administrative law judge authorizes discovery, the agency or the administrative law judge shall control the methods, timing and extent of discovery. Upon request of a party or the agency, the administrative law judge or the agency may issue a protective order limiting the public disclosure of information that is confidential or privileged by law.

(6) Only the agency may issue subpoenas in support of a discovery order. The agency or the party requesting the discovery may apply to the circuit court to compel obedience to a subpoena. (Subpoenas for attendance of witnesses or production of documents at the hearing are controlled by OAR 137-003-0585.)

(7) A party or agency dissatisfied with an administrative law judge's discovery order may ask the Chief Administrative Law Judge for immediate review of the order. A request for review by the Chief Administrative Law Judge must be made in writing within 10 days of the date of the discovery order. The Chief Administrative Law Judge shall review the order and independently apply the criteria set out in OAR 137-003-0567. The Chief Administrative Law Judge's order shall be in writing and shall explain any significant changes to the discovery order.

(8) The Chief Administrative Law Judge or the agency may designate in writing a person to exercise their respective responsibilities under this rule.

(9) In addition to or in lieu of any other discovery method, a party may ask an agency for records under the Public Records Law. The party making a public records request of the agency before which the contested case is pending should serve a copy of the public records request upon the agency representative or the attorney representing the agency.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & 183.630

**History:**

Renumbered from 137-003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0569**

**Discovery in Contested Case Hearing — Enforcement**

(1) The administrative law judge may refuse to admit evidence that was not disclosed in response to a discovery order or discovery request, unless the party or agency that failed to provide discovery offers a satisfactory reason for having failed to do so, or unless excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.417(8). If the administrative law judge admits evidence that was not disclosed as ordered or requested, the administrative law judge must, upon request, grant a continuance to allow an opportunity for the agency or other party to respond to the undisclosed evidence. The requirement to grant continuances shall not apply in implied consent proceedings conducted pursuant to ORS chapter 813.

(2) Failure to respond to a request for admissions required by a discovery order shall be deemed an admission of matters that are the subject of the request for admissions, unless the party or agency failing to respond offers a satisfactory reason for having failed to do so, or unless excluding additional evidence on the subject of the request for admissions would violate the duty to conduct a full and fair inquiry under ORS 183.417(8). If the administrative law judge does not treat failure to respond to the request for admissions as admissions, the administrative law judge may grant a continuance to enable the parties and the agency to develop the record as needed.

(3) Nothing in OAR chapter 137, division 3, shall be construed to require the agency or any party to provide information that is confidential or privileged under state or federal law, except that upon request the agency or any party must disclose all documents that the agency or party intends to introduce at the hearing.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & 183.630

**History:**

Renumbered from 137-003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0572**

**Depositions in Contested Cases**

(1) Depositions may not be taken in contested cases without agency authorization.

(2) A party or an attorney representing the agency may petition the agency for an order to take a deposition of a witness. A copy of the petition shall be sent to all other parties and the administrative law judge. The petition shall include the name and address of the witness, explain why the witness's testimony is material to the proceedings and explain why no other means of obtaining the witness's testimony for the hearing is adequate. As used in this rule, materially means the testimony sought tends to make the existence of any fact that is of consequence to the determination of the issues more or less probable.

(3) The agency shall consider the petition and issue a written order either granting or denying the deposition. If the agency grants the deposition, the deposition shall be taken on such terms as the agency may order including, but not limited to, location, manner of recording, time of day, persons permitted to be present and duration.

(4) Examination and cross-examination of deponents may proceed as permitted at hearing.

(5) The testimony of the deponent shall be recorded.

(6) All objections made at the time of the examination shall be noted on the record.

(7) At any time during the taking of a deposition, upon motion and a showing by a party, the agency or a deponent that the deposition is being conducted or hindered in bad faith or in a manner not consistent with these rules or in such manner as unreasonably to annoy, embarrass or oppress the deponent, the agency or any party, the agency may order the examination to cease or may limit the scope or manner of the taking of the deposition. The taking of the deposition shall be suspended for the time necessary to make a motion under this subsection.

(8) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party or the agency, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party or the agency.

(9) Deposition of a non-party may be compelled by a subpoena issued by the agency. The agency or the party requesting the deposition may apply to circuit court to compel obedience to a subpoena issued to compel a deposition.

(10) Unless otherwise prohibited by law, the agency may delegate to the administrative law judge its authority to authorize or limit depositions. Unless expressly required by law or expressly stated in the delegation by the agency, an administrative law judge may not require the agency to pay for any deposition taken by a party.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.425 & OL 1999 & Ch. 848

**History:**

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

### **137-003-0573**

#### **Individually Identifiable Health Information**

(1) This rule is intended to facilitate the issuance of a Qualified Protective Order (QPO) by an administrative tribunal in a contested case proceeding. The process described in this rule may be used by an agency or party to a contested case proceeding to request information from Covered Entities by using a QPO. This rule is intended to comply with federal requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA Privacy Rules in 45 CFR Parts 160 and 164 to protect the privacy of Protected Health Information. This rule should be construed to implement and not to alter the requirements of 45 CFR § 164.512(e).

(2) For purposes of this rule, capitalized terms used but not otherwise defined in this rule have the meaning given those terms in the HIPAA Privacy Rules in 45 CFR Parts 160 and 164.

(a) An agency or administrative law judge who conducts a contested case hearing on behalf of an agency is an "administrative tribunal," as that term is used in 45 CFR § 164.512(e).

(b) The HIPAA Privacy Rules define "Covered Entity" to include the following entities, as further defined in the HIPAA Privacy Rules:

(A) A Health Insurer or the Medicaid program;

(B) A Health Care Clearinghouse; or

(C) A Health Care Provider that transmits any Individually Identifiable Health Information using Electronic Transactions covered by HIPAA.

(3) An administrative tribunal may issue a QPO at the request of a party, a Covered Entity, an Individual, or the agency.

(a) A request for a QPO may be accompanied by a copy of the subpoena, discovery request, or other lawful process that requests Protected Health Information from a Covered Entity.

(b) If the individual has signed an authorization permitting disclosure of the Protected Health Information for purposes of the contested case proceeding, the administrative tribunal need not issue a QPO.

(4) A QPO is an order of the administrative tribunal that:

(a) Prohibits the use or disclosure of Protected Health Information by the agency or parties for any purpose other than the contested case proceeding or judicial review of the contested case proceeding;

(b) Requires that all copies of the Protected Health Information be returned to the Covered Entity or destroyed at the conclusion of the contested case proceeding, or judicial review of the contested case proceeding, whichever is later; and

(c) Includes such additional terms and conditions as may be appropriate to comply with federal or state confidentiality requirements that apply to the Protected Health Information.

(5) This rule addresses only the process for requesting a QPO from an administrative tribunal in a contested case hearing. This rule does not address any claims or defenses related to the admissibility or confidentiality of Protected Health Information for purposes of discovery or the hearing.

(6) The provisions of this rule do not supercede any other provisions of the HIPAA Privacy Rules that otherwise permit or restrict uses or disclosure of Protected Health Information without the use of a QPO.

(7) This rule applies to all contested cases that are either pending or initiated on or after April 14, 2003.

[Publications: Publications referenced are available from the agency.]

**Statutory/Other Authority:** ORS 183.341, HIPAA 1996, 45 CFR part 160 & 164

**Statutes/Other Implemented:** ORS 183.341 & OL 1999 & Ch. 849

**History:**

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 2-2003, f. 3-19-03, cert. ef. 4-1-03

#### **137-003-0575**

##### **Prehearing Conferences**

(1) Prior to hearing, the administrative law judge may conduct one or more prehearing conferences to facilitate the conduct and resolution of the case. The administrative law judge may convene the conference on the initiative of the administrative law judge or at the agency's or a party's request.

(2) Prior to the conference, the administrative law judge shall notify the party and the agency, if participating, of the purposes of the conference and the matters to be considered. The agency or any party may request that additional matters be considered at the conference by providing notice in writing to the administrative law judge, the parties and the agency.

(3) The party and the agency, if participating in the contested case hearing, shall appear at a prehearing conference through legal counsel or through persons authorized to represent the party or the agency in the contested case hearing.

(4) The purposes of a prehearing conference may include, but are not limited to the following:

(a) To facilitate discovery and to resolve disagreements about discovery;

(b) To identify, simplify and clarify issues;

(c) To eliminate irrelevant or immaterial issues;

(d) To obtain stipulations of fact and to admit documents into evidence;

(e) To provide to the administrative law judge, agency and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;

(f) To authenticate documents;

(g) To decide the order of proof and other procedural matters pertaining to the conduct of the hearing;

(h) To assist in identifying whether the case might be appropriate for settlement or for a collaborative dispute resolution process and, if the agency agrees that the case is appropriate, to refer the case to the agency for settlement discussions or for exploration or initiation of a collaborative dispute resolution process;

(i) To schedule the date, time and location of the hearing or for any other matters connected with the hearing, including dates for pre-filed testimony and exhibits and exchange of exhibits and witness lists; and

(j) To consider any other matters that may expedite the orderly conduct of the proceeding.

(5) The prehearing conference may be conducted in person or by telephone.

(6) The failure of a party or the agency to appear at a prehearing conference convened by the administrative law judge shall not preclude the administrative law judge from making rulings on any matters identified by the administrative law judge in the notice issued under section (2) of this rule, and discussion of any of these matters at the conference in the absence of the agency or a party notified of the conference does not constitute an ex parte communication with the administrative law judge.

(7) The administrative law judge conducting the prehearing conference must make a record of any stipulations, rulings and agreements. The administrative law judge shall either make an audio or stenographic record of the pertinent portions of the conference or shall place the substance of stipulations, rulings and agreements in the record by written summary. Stipulations to facts and to the authenticity of documents and agreements to narrow issues shall be binding upon the agency and the parties to the stipulation unless good cause is shown for rescinding a stipulation or agreement.

(8) After the hearing begins, the administrative law judge may at any time recess the hearing to discuss any of the matters listed in section (4) of this rule.

(9) Nothing in this rule precludes the agency and parties from engaging in informal discussions of any of the matters listed in section (4) of this rule without the participation of the administrative law judge. Any agreement reached in an informal discussion shall be submitted to the administrative law judge in writing or presented orally on the record at the hearing.

(10) An agency may adopt rules regarding the exchange of exhibits and a list of witnesses before the hearing for cases where there are no prehearing conferences.

**Statutory/Other Authority:** ORS 183.341 & 183.502

**Statutes/Other Implemented:** ORS 183.341, 183.502 & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0580**

**Motion for Summary Determination**

(1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(3) The administrative law judge may establish longer or shorter periods than those under section (1) and (2) of this rule for the filing of motions and responses.

(4) The agency by rule may elect not to make available this process for summary determination.

(5) The party and the agency may stipulate to a record, including a record limited to documents, upon which a summary determination shall be made.

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's notice or answer, if any. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

DOJ 9-2001, f. & cert. ef. 10-3-01

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0585**

**Subpoenas**

(1) Subpoenas for the attendance of witnesses or the production of documents at the hearing may be issued as follows:

(a) By an agency on its own motion or by an Assistant Attorney General on behalf of the agency;

(b) By the agency or administrative law judge upon the request of a party to a contested case upon a showing of general relevance and reasonable scope of the evidence sought; and

(c) By an attorney representing a party on behalf of that party.

(2) A motion to quash a subpoena must be presented in writing to the administrative law judge, with service on the agency and any other party in the manner required by OAR 137-003-0520.

(a) The agency and any party may respond to the motion to quash within seven calendar days of receiving the motion. Any response must be in writing and served on the agency and any other party in the manner required by OAR 137-003-0520.

(b) The administrative law judge shall rule on the motion to quash within 14 calendar days of receiving the motion.

(3) If a person fails to comply with a properly issued subpoena, the agency, administrative law judge or party may apply to any circuit court judge to compel obedience with the requirements of the subpoena.

(4) The administrative law judge may establish longer or shorter periods than those under section (2) of this rule for the filing of motions and responses.

(5) The agency shall be responsible for paying any mileage or fees required by ORS 44.415 for witnesses subpoenaed to a hearing under subsection (1)(a) of this rule. The party shall be responsible for paying any mileage or fees required by 44.415 for witnesses subpoenaed to a hearing under subsections (1)(b) or (c) of this rule.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 44.415, 183.341, 183.440, 183.445 & OL 1999 & Ch. 849

**History:**

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0590**

**Qualified Interpreters**

(1) For purposes of this rule:

(a) An "assistive communication device" means any equipment designed to facilitate communication by an individual with a disability;

(b) An "individual with a disability" means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment;

(c) A "non-English speaking" person means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings;

(d) A "qualified interpreter" means:

(A) For an individual with a disability, a person readily able to communicate with the individual with a disability, interpret the proceedings and accurately repeat and interpret the statements of the individual with a disability;

(B) For a non-English speaking person, a person readily able to communicate with the non-English speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions. "Qualified interpreter" does not include a person who is unable to interpret the dialect, slang or specialized vocabulary used by the party or witness.

(2) If an individual with a disability is a party or witness in a contested case hearing:

(a) The administrative law judge shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to, or to interpret the testimony of, the individual with a disability.

(b) No fee shall be charged to the individual with a disability for the appointment of an interpreter or use of an assistive communication device. No fee shall be charged to any person for the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the person is disabled for purposes of this rule.

(3) If a non-English speaking person is a party or witness in a contested case hearing:

(a) The administrative law judge shall appoint a qualified interpreter whenever it is necessary to interpret the proceedings to a non-English speaking party, to interpret the testimony of a non-English speaking party or witness, or to assist the administrative law judge in performing the duties of the administrative law judge.

(b) No fee shall be charged to any person for the appointment of an interpreter to interpret the testimony of a non-English speaking party or witness, or to assist the administrative law judge in performing the duties of the administrative law judge. No fee shall be charged to a non-English-speaking party who is unable to pay for the appointment of an interpreter to interpret the proceedings to the non-English speaking party. No fee shall be charged to any person for the appointment of an interpreter if an appointment is made to determine whether the person is unable to pay or non-English speaking for the purposes of this rule.

(c) A non-English speaking party shall be considered unable to pay for an interpreter for purposes of this rule if:

(A) The party makes a verified statement and provides other information in writing under oath showing financial inability to pay for a qualified interpreter and provides any other information required by the agency concerning the inability to pay for such an interpreter; and

(B) It appears to the agency that the party is in fact unable to pay for a qualified interpreter.

(d) The agency may delegate to the administrative law judge the authority to determine whether the party is unable to pay for a qualified interpreter.

(4) When an interpreter for an individual with a disability or a non-English speaking person is appointed or an assistive communication device is made available under this rule:

(a) The administrative law judge shall appoint a qualified interpreter who is certified under ORS 45.291 if one is available unless, upon request of a party or witness, the administrative law judge deems it appropriate to appoint a qualified interpreter who is not so certified.

(b) The administrative law judge may not appoint any person as an interpreter if the person has a conflict of interest with any of the parties or witnesses, is unable to understand or cannot be understood by the administrative law judge, party or witness, or is unable to work cooperatively with the administrative law judge, the person in need of an interpreter or the representative for that person. If a party or witness is dissatisfied with the interpreter selected by the administrative law judge, a substitute interpreter may be used as provided in ORS 45.275(5).

(c) If a party or witness is dissatisfied with the interpreter selected by the administrative law judge, the party or witness may use any certified interpreter except that good cause must be shown for a substitution if the substitution will delay the proceeding.

(d) Fair compensation for the services of an interpreter or the cost of an assistive communication device shall be paid by the agency except, when a substitute interpreter is used for reasons other than cause, the party requesting the substitute shall bear any additional costs beyond the amount required to pay the original interpreter.

(5) The administrative law judge shall require any interpreter for a person with a disability or a non-English speaking person to state the interpreter's name on the record and whether he or she is certified under ORS 45.291. If the interpreter is not certified under 45.291, the interpreter must state or submit his or her qualifications on the record and must swear or affirm to make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

(6) A person requesting an interpreter for a person with a disability or a non-English speaking person, or assistive communication device for an individual with a disability, must notify the administrative law judge as soon as possible, but no later than 14 calendar days before the proceeding, including the hearing or pre-hearing conference, for which the interpreter or device is requested.

(a) For good cause, the administrative law judge may waive the 14-day advance notice.

(b) The notice to the administrative law judge must include:

(A) The name of the person needing a qualified interpreter or assistive communication device;

(B) The person's status as a party or a witness in the proceeding; and

(C) If the request is in behalf of:

(i) An individual with a disability, the nature and extent of the individual's physical hearing or speaking impairment, and the type of aural interpreter, or assistive communication device needed or preferred; or

(ii) A non-English speaking person, the language spoken by the non-English speaking person.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 45.275, 45.285, 45.288 & OL 1999 & Ch. 849

**History:**

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 9-2001, f. & cert. ef. 10-3-01

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

### **137-003-0595**

#### **Public Attendance; Exclusion of Witnesses; Removal of Disruptive Individuals**

(1) Unless otherwise required by law, contested case hearings are open to the public unless the agency by rule or in writing determines that the hearing will be closed to non-participants in the hearing.

(2) The administrative law judge may exclude witnesses from the hearing, except for a party, a party's authorized representative, expert witnesses, the agency representative, one agency officer or employee and any persons authorized by statute to attend.

(3) An administrative law judge may expel any person from the contested case hearing if that person engages in conduct that disrupts the hearing.

(4) Any party, party's representative, agency or agency's representative, having knowledge or reasonable belief that any person participating in the hearing may present a danger or may be a threat to anyone involved in the hearing, should immediately notify the Office of Administrative Hearings or the assigned administrative law judge, if any, the agency and the parties or their representatives, if appropriate, of the potential danger.

(5) An administrative law judge, the Office of Administrative Hearings, or the agency may take any other measures reasonably required to ensure the safety and security of the participants in the hearing.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & OL 1999 & Ch. 849

**History:**

DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

DOJ 2-2000, f. & cert. ef. 3-27-00

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

### **137-003-0600**

#### **Conducting the Contested Case Hearing**

(1) The contested case hearing shall be conducted by and under the control of the administrative law judge assigned from the Office of Administrative Hearings.

- (2) If the administrative law judge has an actual or potential conflict of interest as defined in ORS 244.020(1) or (12), that administrative law judge shall comply with the requirements of ORS Chapter 244 (e.g., 244.120 and 244.130).
- (3) At the commencement of the hearing, the administrative law judge shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.
- (4) The hearing shall be conducted so as to include the following:
  - (a) The statement and evidence of the proponent in support of its action;
  - (b) The statement and evidence of opponents, interested agencies, and other parties; except that limited parties may address only subjects within the area to which they have been limited;
  - (c) Any rebuttal evidence; and
  - (d) Any closing arguments.
- (5) The administrative law judge, the agency through an agency representative or assistant attorney general, interested agencies through an assistant attorney general, and parties or their attorneys or authorized representatives shall have the right to question witnesses. However, limited parties may question only those witnesses whose testimony may relate to the area or areas of participation granted by the agency.
- (6) The hearing may be continued with recesses as determined by the administrative law judge.
- (7) The administrative law judge may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, irrelevant or immaterial matter.
- (8) Exhibits shall be marked and maintained by the administrative law judge as part of the record of the proceedings.
- (9) If the administrative law judge receives any written or oral ex parte communication during the contested case proceeding, the administrative law judge shall notify all parties and otherwise comply with the requirements of OAR 137-003-0625.
- (10) The administrative law judge may request that any closing arguments be submitted in writing or orally.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.417(9) and (10), 183.450(3), 183.630 & 183.695

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12  
DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06  
DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04  
DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03  
DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0605**

**Telephone Hearings**

- (1) Unless precluded by law, the administrative law judge may hold a hearing or portion of a hearing by telephone and may permit a party or witness to appear at a hearing by telephone.
- (2) If a hearing is to be held by telephone, each party and the agency, if participating in the contested case hearing, shall provide, before the commencement of the hearing, to all other parties, to the agency and to the administrative law judge copies of the exhibits it intends to offer into evidence at the hearing.
- (3) If a witness is to testify by telephone, the party or agency that intends to call the witness shall provide, before commencement of the hearing, to the witness, to the other parties, to the agency, if participating in the contested case hearing, and to the administrative law judge a copy of each document about which the witness will be questioned.
- (4) Nothing in this rule precludes any party or the agency from seeking to introduce documentary evidence in addition to evidence described in section (2) during the telephone hearing. The administrative law judge shall receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the agency and to the other parties, the hearing must be continued upon the request of any party or the agency for sufficient time to allow the party or the agency to obtain and review the evidence.
- (5) The administrative law judge shall make an audio or stenographic record of any telephone hearing.
- (6) As used in this rule, "telephone" means any two-way or multi-party electronic communication device, including video conferencing.

**Statutory/Other Authority:** ORS 183.341  
**Statutes/Other Implemented:** ORS 183.341 & 183.630  
**History:**  
DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12  
DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04  
DOJ 9-2001, f. & cert. ef. 10-3-01  
DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0610**  
**Evidentiary Rules**

- (1) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.
- (2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, and privileges afforded by Oregon law shall be recognized by the administrative law judge.
- (3) All offered evidence, not objected to, will be received by the administrative law judge subject to the administrative law judge's power to exclude irrelevant, immaterial, or unduly repetitious matter.
- (4) Evidence objected to may be received by the administrative law judge. If the administrative law judge does not rule on its admissibility at the hearing, the administrative law judge shall do so either on the record before a proposed order is issued or in the proposed order. If the administrative law judge has authority to issue a final order without first issuing a proposed order, the administrative law judge may rule on the admissibility of the evidence in the final order.
- (5) The administrative law judge shall accept an offer of proof made for excluded evidence. The offer of proof shall contain sufficient detail to allow the reviewing agency or court to determine whether the evidence was properly excluded. The administrative law judge shall have discretion to decide whether the offer of proof is to be oral or written and at what stage in the proceeding it will be made. The administrative law judge may place reasonable limits on the offer of proof, including the time to be devoted to an oral offer or the number of pages in a written offer.

**Statutory/Other Authority:** ORS 183.341  
**Statutes/Other Implemented:** ORS 183.341, 183.450 & OL 1999 & Ch. 849  
**History:**  
DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04  
DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0615**  
**Judicial Notice and Official Notice of Facts**

- (1) The administrative law judge may take notice of judicially cognizable facts on the record before issuance of the proposed order or in the proposed order or, if the administrative law judge has authority to issue a final order without first issuing a proposed order, before the final order is issued. The agency or party(ies) may present rebuttal evidence.
- (2) The administrative law judge may take official notice of general, technical or scientific facts within the specialized knowledge of the administrative law judge.
  - (a) If the administrative law judge takes official notice of general, technical or scientific facts, the administrative law judge shall provide such notice to the parties and the agency, if the agency is participating in the contested case hearing, before the issuance of the proposed order or, if the administrative law judge has authority to issue a final order without first issuing a proposed order, before the final order is issued.
  - (b) The agency or a party may object or may present rebuttal evidence in response to the administrative law judge's official notice of general, technical or scientific facts.
  - (c) If an objection is made or if rebuttal evidence is presented, the administrative law judge shall rule before the issuance of the proposed order or in the proposed order or, if the administrative law judge has authority to issue a final order, in the final order on whether the noticed facts will be considered as evidence in the proceeding.
- (3) Before the issuance of the proposed order or a final order issued by an administrative law judge, the agency may take notice of judicially cognizable facts and may take official notice of general, technical or scientific facts within the specialized knowledge of the agency as follows:
  - (a) The agency shall provide notice of judicially cognizable facts or official notice of general, technical or scientific facts in writing to the administrative law judge and parties to the hearing.
  - (b) A party may present rebuttal evidence in response to agency notice of judicially cognizable facts or official notice of general, technical or scientific facts.

(c) If a party presents rebuttal evidence, the administrative law judge shall rule on whether the noticed facts will be considered as evidence in the proceeding.

(4) After the issuance of a proposed order, the agency may take notice of judicially cognizable facts and may take official notice of general, technical or scientific facts within the specialized knowledge of the agency as follows:

(a) The agency shall provide notice of judicially cognizable facts or official notice of general, technical or scientific facts in writing to the parties to the hearing and, if authorized to issue a final order, to the administrative law judge.

(b) A party may object in writing to agency notice of judicially cognizable facts or official notice of general, technical or scientific facts with service on any other parties, the agency and, if authorized to issue a final order, on the administrative law judge in the manner required by OAR 137-003-0520. A party may request that the agency or, if authorized to issue a final order, the administrative law judge provide an opportunity for the party to present written or non-written rebuttal evidence.

(c) The agency may request the administrative law judge to conduct further hearing proceedings under OAR 137-003-0655 as necessary to permit a party to present rebuttal evidence.

(d) If a party presents rebuttal evidence, the agency or, if authorized to issue a final order, the administrative law judge shall rule in the final order on whether the noticed facts were considered as evidence.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.450(4) & OL 1999 & Ch. 849

**History:**

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0625**

**Ex Parte Communications with Administrative Law Judge**

(1) For purposes of this rule, an ex parte communication is:

(a) An oral or written communication;

(b) By a party, a party's representative or legal adviser, any other person who has a direct or indirect interest in the outcome of the proceeding, any other person with personal knowledge of the facts relevant to the proceeding, or any officer, employee or agent of the agency;

(c) That relates to a legal or factual issue in the contested case proceeding;

(d) Made directly or indirectly to the administrative law judge;

(e) While the contested case proceeding is pending;

(f) That is made without notice and opportunity for the agency and all parties to participate in the communication.

(2) If an administrative law judge receives an ex parte communication during the pendency of the contested case proceeding, the administrative law judge shall place in the record:

(a) The name of each individual from whom the administrative law judge received an ex parte communication;

(b) A copy of any ex parte written communication received by the administrative law judge;

(c) A memorandum reflecting the substance of any ex parte oral communication made to the administrative law judge;

(d) A copy of any written response made by the administrative law judge to any ex parte oral or written communication; and

(e) A memorandum reflecting the substance of any oral response made by the administrative law judge to any ex parte oral or written communication.

(3) The administrative law judge shall advise the agency and all parties in the proceeding that an ex parte communication has been made a part of the record. The administrative law judge shall allow the agency and parties an opportunity to respond to the ex parte communication. Any responses shall be made part of the record.

(4) The provisions of this rule do not apply to:

(a) Communications made to an administrative law judge by other administrative law judges; or

(b) Communications made to an administrative law judge by any person employed by the Office of Administrative Hearings to assist the administrative law judge.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.630, 183.685 & Or Laws 2009 & ch 866 § 9

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0630**

**Motions**

(1) A request for any order or other relief may be made by filing a motion in writing. The motion need not be in any particular form.

(2) Before filing any motion, the moving party or agency should make a good faith effort to confer with any non-moving party or agency regarding the order or relief sought to seek agreement about the subject of the motion. The moving party or agency need not make an effort to confer if efforts to confer would pose a risk to any person or would be futile. Any motion must describe the effort to confer and the result of the effort, or explain why the moving party or agency made no effort to confer with the non-moving party or agency.

(3) Unless otherwise provided by statute or rule, all motions shall be filed in writing at least 14 calendar days before the date set for the hearing and a copy provided to the parties and to the agency in the manner required by OAR 137-003-0520 except:

(a) Motions seeking to intervene or to be granted party status under OAR 137-003-0535,

(b) Motions made in a pre-hearing conference,

(c) Motions for a ruling on legal issues under OAR 137-003-0580; and

(d) Motions to continue a scheduled conference or hearing,

(e) Motions to quash a subpoena under OAR 137-003-0585 when the subpoena is served less than 14 days before the date set for the hearing.

(4) The agency or a party may file a response to a motion.

(a) Responses to motions filed 14 or more calendar days before the date of the hearing shall be in writing with service to the parties and to the agency in the manner required by OAR 137-003-0520 and shall be filed and served within seven calendar days after receipt of the motion.

(b) Responses to motions filed fewer than 14 calendar days before the date of the hearing may be in writing or presented orally at the hearing. If the response is in writing, the response must be filed and served on the parties or the agency in the manner required by OAR 137-003-0520 before the start of the hearing.

(5) Responses to late-filed motions may be presented orally or in writing at the contested case hearing.

(6) At the request of a party or the agency, or on the administrative law judge's own motion, the administrative law judge may establish longer or shorter periods than those under sections (2) and (3) of this rule for the filing of motions and responses. The administrative law judge may also consider motions presented orally at the contested case hearing. In exercising discretion under this subsection, the administrative law judge shall consider the duty to ensure a full and fair inquiry into the facts and the likelihood of undue delay or unfair prejudice.

(7) The mere filing or pendency of a motion, even if uncontested, does not alter or extend any time limit or deadline established by statute, rule or order.

(8) The administrative law judge shall rule on all motions on the record before issuance of a proposed order or in the proposed order or, if the administrative law judge has authority to issue a final order without first issuing a proposed order, in the final order.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & OL 1999 & Ch. 849

**History:**

DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 9-2001, f. & cert. ef. 10-3-01

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0635**

**Transmittal of Questions to the Agency**

(1) Questions regarding the following issues may be transmitted to the agency:

(a) The agency's interpretation of its rules and applicable statutes; or

(b) Which rules or statutes apply to a proceeding.

(2) At the request of a party, the agency, or their representatives, or on the administrative law judge's own motion, the administrative law judge may transmit a question to the agency unless the agency by rule or in writing elects not to make available this process for transmittal of questions to the agency.

(3) The administrative law judge shall submit any transmitted question in writing to the agency. The submission shall include a summary of the matter in which the question arises and shall be served on the agency representative and parties in the manner required by OAR 137-003-0520.

(4) The agency may request additional submissions by a party or the administrative law judge in order to respond to the transmitted question.

(5) Unless prohibited by statute or administrative rules governing the timing of hearings, the administrative law judge may stay the proceeding and shall not issue the proposed order or the final order, if the administrative law judge has authority to issue the final order, until the agency responds to the transmitted question.

(6) The agency shall respond in writing to the transmitted question within a reasonable time. The agency's response must be signed by a person with authority to speak on the question transmitted.

(7) The agency's response shall be made a part of the record of the contested case hearing. The agency's response may be to decline to answer the transmitted question. The agency shall provide its response to the administrative law judge and to each party. The parties may reply to the agency's response within a reasonable time.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 12-2007, f. 10-30-07, cert. ef. 11-2-07

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 9-2001, f. & cert. ef. 10-3-01

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0640**

**Immediate Review by Chief Administrative Law Judge**

(1) Before issuance of a proposed order or before issuance of a final order if the administrative law judge has authority to issue a final order, the agency or a party may seek immediate review by the Chief Administrative Law Judge of the administrative law judge's decision on any of the following:

(a) A ruling on a motion to quash a subpoena under OAR 137-003-0585;

(b) A ruling refusing to consider as evidence judicially or officially noticed facts presented by the agency under OAR 137-003-0615 that is not rebutted by a party;

(c) A ruling on the admission or exclusion of evidence based on a claim of the existence or non-existence of a privilege;

(2) The agency or a party may file a response to the request for immediate review. The response shall be in writing and shall be filed with the Chief Administrative Law Judge within five calendar days after receipt of the request for review with service on the administrative law judge, the agency representative, if any, and any other party.

(3) The mere filing or pendency of a request for the Chief Administrative Law Judge's immediate review, even if uncontested, does not alter or extend any time limit or deadline established by statute, rule, or order.

(4) The Chief Administrative Law Judge shall rule on all requests for immediate review in writing.

(5) The request and ruling shall be made part of the record of the proceeding.

(6) The Chief Administrative Law Judge may designate in writing a person to exercise his or her responsibilities under this rule.

(7) The agency may by rule elect to provide for immediate review by the agency instead of the Chief Administrative Law Judge. The agency may specify that the rule applies only to a category of cases or to all cases. Any rule adopted pursuant to this subsection must be adopted and in effect prior to issuance of the agency's notice of proposed action.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, ORS 183.413, ORS 183.415 & ORS 183.630

**History:**

DOJ 1-2016, f. 1-28-16, cert. ef. 2-1-16  
DOJ 6-2014, f. & cert. ef. 4-1-14  
DOJ 4-2014(Temp), f. 1-31-14, cert. ef. 2-1-14 thru 7-31-14  
DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12  
DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04  
DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0645****Proposed Orders in Contested Cases**

(1) Unless the administrative law judge is authorized or required to issue a final order without first issuing a proposed order, the administrative law judge shall prepare a proposed order.

(2) The proposed order shall be based exclusively on:

(a) The pleadings, including the contested case notice, and motions;

(b) The applicable law;

(c) Evidence and arguments;

(d) Stipulations;

(e) Ex parte written communications received by the administrative law judge, memoranda prepared by the administrative law judge reflecting the substance of any ex parte oral communications made to the administrative law judge, written responses made by the administrative law judge and any memoranda prepared by the administrative law judge reflecting the substance of any oral responses made by the administrative law judge;

(f) Judicially cognizable facts and matters officially noticed;

(g) Proposed findings of fact and written argument submitted by a party or the agency;

(h) Intermediate orders or rulings by the administrative law judge or Chief Administrative Law Judge; and

(i) Any other material made part of the record of the hearing.

(3) The proposed order shall fully dispose of all issues presented to the administrative law judge that are required to resolve the case. The proposed order shall be in writing and shall include:

(a) The case caption;

(b) The name of the administrative law judge(s), the appearances of the parties and identity of witnesses;

(c) A statement of the issues;

(d) References to specific statutes or rules at issue;

(e) Rulings on issues presented to the administrative law judge, such as admissibility of offered evidence, when the rulings are not set forth in the record;

(f) Findings as to each issue of fact and as to each ultimate fact required to support the proposed order, along with a statement of the underlying facts supporting each finding;

(g) Conclusions of law based on the findings of fact and applicable law;

(h) An explanation of the reasoning that leads from the findings of fact to the legal conclusion(s);

(i) The action the administrative law judge recommends the agency take as a result of the facts found and the legal conclusions arising there from; and

(j) The name of the administrative law judge who prepared the proposed order and the date the order was issued.

(4) The agency by rule may provide that the proposed order will become a final order if no exceptions are filed within the time specified in the agency rule unless the agency notifies the parties and the administrative law judge that the agency will issue the final order. If the agency adopts such a rule, the proposed order shall include a statement to this effect.

(5) If the recommended action in the proposed order is adverse to any party, the proposed order shall also include a statement that the party may file exceptions and present argument to the agency or, if authorized to issue the final order, to the administrative law judge. The proposed order shall include information provided by the agency as to:

(a) Where and when written exceptions must be filed to be considered by the agency; and

(b) When and in what form argument may be made to the official(s) who will render the final order.

(6) The administrative law judge shall serve the proposed order on the agency and each party.

(7) The proposed order shall include a certificate of service, documenting the date the proposed order was served on the agency and each party.

(8) The administrative law judge shall transmit the hearing record to the agency when the proposed order is served or, if the administrative law judge has authority to issue a final order, when the final order is served.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.460, 183.464, 183.630 & 183.685

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

#### **137-003-0650**

##### **Exceptions to Proposed Order**

(1) If the recommended action in the proposed order is adverse to any party or the agency, the party or agency may file exceptions and present argument to the agency or, if authorized to issue a final order, to the administrative law judge.

(2) The agency shall by rule or in writing describe:

(a) Where and when written exceptions must be filed to be considered by the agency; and

(b) When and in what form argument may be made to the official(s) who will render the final order.

(3) The agency may request the administrative law judge to review any written exceptions received by the agency and request the administrative law judge either to provide a written response to the exceptions to be made a part of the record or to revise the proposed order as the administrative law judge considers appropriate to address any exceptions. The administrative law judge shall not consider new or additional evidence unless, pursuant to OAR 137-003-0655(2), the agency requests the administrative law judge to conduct further hearing. The administrative law judge's response must be in writing, either in the form of a response to the exceptions or a revised proposed order, and sent to all parties and the agency.

(4) Agency staff may comment to the agency or the administrative law judge on the proposed order, and the agency or the administrative law judge may consider such comments, subject to OAR 137-003-0625 and 137-003-0660.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.460, 183.464 & QL 1999 & Ch. 849

**History:**

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

#### **137-003-0655**

##### **Further Hearing and Issuance of Final Order**

(1) After issuance of the proposed order, if any, the administrative law judge shall not hold any further hearing or revise or amend the proposed order except at the request of the agency, except as provided in this subsection. The administrative law judge may withdraw a proposed order for correction within three working days of issuance of the proposed order. If the administrative law judge withdraws a proposed order for correction, the time for filing exceptions shall begin on the date the administrative law judge issues the corrected proposed order.

(2) If the agency requests the administrative law judge to conduct a further hearing under section (1) of this rule, the agency shall specify the scope of the hearing and the issues to be addressed. After further hearing, the administrative law judge shall issue a proposed order.

(3) If the administrative law judge's proposed order recommended a decision favorable to a party and the agency intends to reject that recommendation and issue an order adverse to that party, the agency shall issue an amended proposed order if:

(a) The official(s) who are to render the final order have not considered the record; or

(b) The changes to the proposed order are not within the scope of any exceptions or agency comment to which there was an opportunity to respond.

(4) Any amended proposed order issued under section (3) of this rule shall comply with OAR 137-003-0665(3) and (4) and shall include a statement that the party may file exceptions and present argument to the agency. The agency shall serve the amended proposed order on each party to the contested case proceeding.

(5) The agency or, if authorized to issue a final order, administrative law judge shall consider any timely exceptions and argument before issuing a final order. If exceptions are received, the agency or the administrative law judge may not consider new or additional evidence unless the agency requests the administrative law judge to conduct further hearings under section (1) of this rule. The agency or administrative law judge may issue an amended proposed order in light of any exceptions or argument.

(6) The agency or, if authorized, the administrative law judge shall issue a final order in accordance with OAR 137-003-0665. The agency may adopt the proposed order as the final order, or modify the proposed order and issue the modified order as the final order.

(7) An agency should issue an amended proposed order or a final order within 90 days of the date of the proposed order. When an agency will not issue an amended proposed order or final order within 90 days of the proposed order, the agency shall give written notice to the administrative law judge and all parties of the date by which the agency expects to issue the amended proposed order or the final order. This rule does not apply to proceedings under ORS chapters 539 and 537.670 through 537.700. An agency may adopt a rule exempting classes of cases from the requirements of this subsection upon the agency's determination that, due to the nature of the cases, 90 days normally is an insufficient time in which to issue an amended proposed or final order. The requirements of this subsection apply to all orders for which the proposed order is issued after January 31, 2012.

(8) If an agency decision maker has an actual or potential conflict of interest as defined in ORS 244.020(1) or (7), that decision maker shall comply with the requirements of ORS Chapter 244, including but not limited to 244.120 and 244.130.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341 & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03

DOJ 9-2001, f. & cert. ef. 10-3-01

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0660**

**Ex Parte Communications to Agency during Review of Contested Case**

(1) For purposes of this rule, an ex parte communication is an oral or written communication to an agency decision maker during its review of the contested case not made in the presence of all parties to the hearing, concerning a fact in issue in the proceeding, but does not include communication from agency staff or counsel about legal issues or about facts in the record.

(2) If an agency decision maker receives an ex parte communication during its review of a contested case, the decision maker shall:

(a) Give all parties notice of the substance of the communication, if oral, or a copy of the communication, if written; and

(b) Provide any party who did not present the ex parte communication an opportunity to rebut the substance of the ex parte communication.

(3) The agency shall include in the record of the contested case proceeding:

(a) The ex parte communication, if in writing;

(b) A statement of the substance of the ex parte communication, if oral;

(c) The agency's notice to the parties of the ex parte communication; and

(d) Rebuttal evidence, if any.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.462 & O.L. 1999 & Ch. 849

**History:**

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0665**

**Final Orders in Contested Cases**

(1) Final orders in contested cases shall be in writing.

(2) Except as provided in section (5) of this rule, all final orders in contested cases shall include the following:

(a) Each of the elements identified in OAR 137-003-0645(3)(a)–(h),

(b) An Order stating the action taken by the agency as a result of the facts found and the legal conclusions arising there from; and

(c) A citation of the statutes under which the order may be appealed.

(3) If the agency modifies the proposed order issued by the administrative law judge in any substantial manner, the agency must identify the modification and explain to the parties why the agency made the modification. For purposes of this provision, an agency modifies a proposed order in a "substantial manner" when the effect of the modification is to change the outcome or the basis for the order or to change a finding of fact.

(4) The agency may modify a finding of historical fact made by the administrative law judge only if the agency determines that there is clear and convincing evidence in the record that the finding made by the administrative law judge was wrong. For purposes of this provision, an administrative law judge makes a finding of historical fact if the administrative law judge determines that an event did or did not occur in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing.

(5) When informal disposition of a contested case is made by stipulation, agreed settlement or consent order as provided in OAR 137-003-0510(4), the final order need not comply with section (2) of this rule. However, the order must state the agency action and:

(a) Incorporate by reference a stipulation or agreed settlement signed by the party or parties agreeing to that action; or

(b) Be signed by the party or parties; and

(c) A copy must be delivered or mailed to each party and the attorney of record for each party that is represented.

(6) The final order shall be served on each party and, if the party is represented, on the party's attorney.

(7) The date of service of the final order on the parties or, if a party is represented, on the party's attorney shall be specified in writing and be part of or be attached to the order on file with the agency, unless service of the final order is not required by statute.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.417(3), 183.470, 183.630, 183.650(3) & Or Laws 2009, ch 866 & § 7

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0670**

**Default in Cases Involving a Notice of Proposed Action that Does Not Become Final Without a Hearing or Default**

(1) This rule applies when the agency issues a notice of proposed action that does not become final in the absence of a request for hearing. The agency or, if authorized, the administrative law judge may issue a final order by default:

(a) When the agency gave a party an opportunity to request a hearing and the party failed to request a hearing within the time allowed to make the request;

(b) When the party that requested a hearing withdraws the request;

(c) Except as provided in section (2) of this rule, when the agency or administrative law judge notified the party of the time and place of the hearing and the party fails to appear at the hearing; or

(d) When the agency or administrative law judge notified the party of the time and place of the hearing in a matter in which only one party is before the agency and that party subsequently notifies the agency or administrative law judge that the party will not appear at the hearing, unless the agency or administrative law judge agreed to reschedule the hearing.

(2) If the party failed to appear at the hearing and, before issuing a final order by default, the agency or administrative law judge finds that the party had good cause for not appearing, the agency or administrative law judge may not issue a final order by default under section (1)(c) of this rule. In this case, the administrative law judge shall schedule a new hearing. If the reasons for the party's failure to appear are in dispute, the administrative law judge shall schedule a hearing on the reasons for the party's failure to appear.

(3)(a) An agency or administrative law judge may issue an order adverse to a party upon default under section (1) of this rule only upon a prima facie case made on the record. The agency or administrative law judge must find that the record contains evidence that persuades the agency or administrative law judge of the existence of facts necessary to support the order.

(b) Except as provided in subsection (c) of this section, if the agency designated the agency file in a matter as the record when a contested case notice for the matter was issued in accordance with OAR 137-003-0505 and no further testimony or evidence is necessary to establish a prima facie case, the agency file, including all materials submitted by a party, shall constitute the record. No hearing shall be conducted. The agency or, if authorized, the administrative law judge shall issue a final order by default under section (1) of this rule in accordance with 137-003-0665.

(c) If the agency determines that testimony or evidence is necessary to establish a prima facie case or if more than one party is before the agency and one party appears at the hearing, the administrative law judge shall conduct a hearing and, unless authorized to issue a final order without first issuing a proposed order, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645. The agency or, if authorized, the administrative law judge shall issue a final order by default in accordance with 137-003-0665.

(4) The agency or administrative law judge shall notify a defaulting party of the entry of a final order by default by delivering or mailing a copy of the order.

(5) If a final order by default is entered because a party did not request a hearing within the time specified by the agency, the party may make a late hearing request as provided in OAR 137-003-0528.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.417(4), 183.450, 183.470 & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 9-2001, f. & cert. ef. 10-3-01

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0672**

**Default in Cases Involving an Agency Order that May Become Final Without a Request for Hearing**

(1) This rule applies when the agency has issued a contested case notice containing an order that was to become effective unless a party requested a hearing, has designated the agency file, including all materials submitted by a party, as the record, and the record constitutes a prima facie case.

(2) When the agency gives a party an opportunity to request a hearing and the party fails to request a hearing within the time allowed to make the request, the agency order is final and no further order need be served upon the party. The party may make a late hearing request as provided in OAR 137-003-0528.

(3) After a party requests a hearing, the agency or the administrative law judge will dismiss the request for hearing, and the agency order is final as if the party never requested a hearing if:

(a) The party that requested a hearing withdraws the request;

(b) The agency or administrative law judge notifies the party of the time and place of the hearing and the party fails to appear at the hearing; or

(c) In a matter in which only one party is before the agency, the agency or administrative law judge notifies the party of the time and place of the hearing, and the party notifies the agency or administrative law judge that the party will not appear at the hearing, unless the agency or administrative law judge agrees to reschedule the hearing.

(4) If the party fails to appear at the hearing and, before dismissing the request for hearing, the administrative law judge finds that the party had good cause for failing to appear, the administrative law judge may not dismiss the request for hearing under section (3)(b) of this rule. In this case, the administrative law judge shall schedule a new hearing. If the reasons for the party's failure to appear are in dispute, the administrative law judge shall schedule a hearing on the reasons for the party's failure to appear.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.417(4) 183.470 & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

**137-003-0675****Reconsideration and Rehearing — Contested Cases**

(1) Unless otherwise provided by statute, a party may file a petition for reconsideration or rehearing of a final order in a contested case with the agency within 60 calendar days after the order is served. A copy of the petition shall also be delivered or mailed to all parties or other persons and agencies required by statute, rule or order to receive notice of the proceeding.

(2) The agency may, by rule, require a party to file a petition for reconsideration or rehearing as a condition of judicial review. The agency may, by rule or in writing, require any petition for reconsideration or rehearing to be filed with the administrative law judge.

(3) The petition shall set forth the specific grounds for reconsideration or rehearing. The petition may be supported by a written argument.

(4) The petition may include a request for stay of a final order if the petition complies with the requirements of OAR 137-003-0690(3).

(5) Within 60 calendar days after the order is served, the agency may, on its own initiative, reconsider the final order or rehear the case. If a petition for judicial review has been filed, the agency must follow the procedures set forth in ORS 183.482(6) before taking further action on the order. The procedural and substantive effect of reconsideration or rehearing under this section shall be identical to the effect of granting a party's petition for reconsideration or rehearing.

(6) The agency may consider a petition for reconsideration or rehearing as a request for either or both. The petition may be granted or denied by summary order and, if no action is taken, shall be deemed denied as provided in ORS 183.482.

(a) If the agency determines that reconsideration alone is appropriate, the agency shall enter a new final order in accordance with OAR 137-003-0665, which may be an order affirming the existing order.

(b) If the agency determines that rehearing is appropriate, the agency shall decide upon the scope of the rehearing. The agency shall request the administrative law judge to conduct further hearing on such issues as the agency specifies and to prepare a proposed order as appropriate. The agency shall issue a new final order in accordance with OAR 137-003-0665. The agency may adopt the proposed order prepared by the administrative law judge as the final order, or modify the proposed order and issue the modified order as the final order.

(7) Reconsideration or rehearing shall not be granted after the filing of a petition for judicial review, except in the manner provided by ORS 183.482(6).

(8) Unless otherwise provided by law, a final order remains in effect during reconsideration or rehearing until stayed or changed.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.482 & OL 1999 & Ch. 849

**History:**

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 2-2000, f. & cert. ef. 3-27-00

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0690****Stay Request — Contested Case**

(1) Unless otherwise provided by law, any person who submits a hearing request after a final order by default has been issued or petitions for reconsideration, rehearing or judicial review may request the agency to stay the enforcement of the agency order that is the subject of the petition.

(2) The agency may, by rule or in writing, require the stay request to be filed with the administrative law judge.

(3) The stay request shall contain:

(a) The name, address and telephone number of the person filing the request and of that person's attorney or representative, if any;

(b) The full title of the agency decision as it appears on the order and the date of the agency decision;

(c) A summary of the agency decision;

(d) The name, address and telephone number of each other party to the agency proceeding. When the party was represented by an attorney or representative in the proceeding, then the name, address and telephone number of the attorney or representative shall be provided and the address and telephone number of the party may be omitted.

(e) A statement advising all persons whose names, addresses and telephone numbers are required to appear in the stay request as provided in subsection (3)(d) of this rule, that they may participate in the stay proceeding before the agency if they file a response in accordance with OAR 137-003-0695 within ten calendar days from delivery or mailing of the stay request to the agency;

(f) A statement of facts and reasons sufficient to show that:

(A) The petitioner will suffer irreparable injury if the order is not stayed; and,

(B) There is a colorable claim of error in the order;

(g) A statement explaining why granting the stay will not result in substantial public harm;

(h) A statement identifying any person, including the public, who may suffer injury if the stay is granted. If the purposes of the stay can be achieved with limitations or conditions that minimize or eliminate possible injury to other persons, petitioner shall propose such limitations or conditions. If the possibility of injury to other persons cannot be eliminated or minimized by appropriate limitation or conditions, petitioner shall propose an amount of bond, irrevocable letter of credit or other undertaking to be imposed on the petitioner should the stay be granted, explaining why that amount is reasonable in light of the identified potential injuries;

(i) A description of additional procedures, if any, the petitioner believes should be followed by the agency in determining the appropriateness of the stay request; and

(j) An appendix of affidavits containing evidence (other than evidence contained in the record of the contested case out of which the stay request arose) relied upon in support of the statements required under subsections (3)(f), (g) and (h) of this rule. The record of the contested case out of which the stay request arose is a part of the record of the stay proceedings.

(4) The request must be delivered or mailed to the agency and on the same date a copy delivered or mailed to all parties identified in the request as required by subsection (3)(d) of this rule.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.482(3) & 183.630

**History:**

DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

DOJ 9-2001, f. & cert. ef. 10-3-01

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

#### **137-003-0695**

##### **Intervention in Stay Proceeding**

(1) Any party identified under OAR 137-003-0690(3)(d) desiring to participate as a party in the stay proceeding may file a response to the request for stay.

(2) The agency may, by rule or in writing, require the response to be filed with the administrative law judge.

(3) The response shall contain:

(a) The full title of the agency decision as it appears on the order;

(b) The name, address, and telephone number of the person filing the response, except that if the person is represented by an attorney, then the name, address, and telephone number of the attorney shall be included and the person's address and telephone number may be deleted;

(c) A statement accepting or denying each of the statements of facts and reasons provided pursuant to OAR 137-003-0690(3)(f) in the petitioner's stay request; and

(d) A statement accepting, rejecting, or proposing alternatives to the petitioner's statement on the bond, irrevocable letter of credit or undertaking amount or other reasonable conditions that should be imposed on petitioner should the stay request be granted.

(4) The response may contain affidavits containing additional evidence upon which the party relies in support of the statement required under subsections (3)(c) and (d) of this rule.

(5) The response must be delivered or mailed to the agency and to all parties identified in the stay request within 10 calendar days of the date of delivery or mailing to the agency of the stay request.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.482(3) & OL 1999 & Ch. 849

**History:**

DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04  
DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

**137-003-0700****Stay Proceeding and Order**

(1) The agency may conduct such further proceedings pertaining to the stay request as it deems desirable, including taking further evidence on the matter. Agency staff may present additional evidence in response to the stay request. The agency shall commence such proceedings promptly after receiving the stay request.

(2) The agency shall issue an order granting or denying the stay request within 30 calendar days after receiving it. The agency's order shall:

(a) Grant the stay request upon findings of irreparable injury to the petitioner and a colorable claim of error in the agency order and may impose reasonable conditions, including but not limited to, a bond, irrevocable letter of credit or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within a specified reasonable period of time; or

(b) Deny the stay request upon a finding that the petitioner failed to show irreparable injury or a colorable claim of error in the agency order; or

(c) Deny the stay request upon a finding that a specified substantial public harm would result from granting the stay, notwithstanding the petitioner's showing of irreparable injury and a colorable claim of error in the agency order; or

(d) Grant or deny the stay request as otherwise required by law.

**Statutory/Other Authority:** ORS 183.341

**Statutes/Other Implemented:** ORS 183.341, 183.482(3) & OL 1999 & Ch. 849

**History:**

DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

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# Staff Report and Memorandum

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To: Chair, Vice-Chair, and members of the DOGAMI Governing Board

From: Brad Avy, Director & Diane M. Lloyd, Assistant Attorney General

Date: December 4, 2017

**Regarding: Agenda Item 9 – Tsunami Line Update**

Director Avy and Diane Lloyd will provide a Tsunami Line update.

*Proposed Board Action: The Board may be asked to take an action on this item.*

# Staff Report and Memorandum

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To: Chair, Vice-Chair, and members of the DOGAMI Governing Board

From: Kim Riddell, Chief Financial Officer

Date: November 28, 2017

**Regarding: Agenda Item 11 – Financial Report**

Attached is the DOGAMI Budget Status Report (previous and edited proposed versions), as of November 27, 2017 for the Geological Survey and Services (GS&S) Program and the Mineral Land Regulation & Reclamation (MLRR) Program.

***Proposed Board Action: The Budget Status Report be Approved/Not Approved as presented.***

Department of Geology & Mineral Industries  
Budget Status Report: As of November 27, 2017

% of Time Spent 100%	% of Time Remaining: 0%
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Geological Survey & Services (GS&S) Program

Budget Category / Line Item	2015-17 Budget by Funding Source				2015-17 Actual Revenue & Expenditures				Budget Spent				Budget Remaining			
	General	Other	Federal	All	General	Other	Federal	All	All				All			
	Funds	Funds	Funds	Funds	Funds	Funds	Funds	Funds	GF	OF	FF	Funds	GF	OF	FF	Funds
<b>Revenue</b>																
Beginning Balance	-	1,194,513	-	1,194,513	-	1,194,513	-	1,194,513								
2015-17 Revenue	4,806,968	4,273,213	6,865,670	15,945,851	4,806,968	2,611,415	5,487,399	12,905,782								
<b>Total Available Revenue</b>	<b>4,806,968</b>	<b>5,467,726</b>	<b>6,865,670</b>	<b>17,140,364</b>	<b>4,806,968</b>	<b>3,805,928</b>	<b>5,487,399</b>	<b>14,100,295</b>	####	70%	80%	82%	0%	30%	20%	18%
<b>Expenditures:</b>																
<i>Personnel Services</i>	2,950,781	971,415	2,433,910	6,356,106	2,645,073	1,245,445	2,042,226	5,932,744	90%	128%	84%	93%	10%	-28%	16%	7%
<i>Services &amp; Supplies</i>																
Instate Travel	11,921	69,486	170,519	251,926	90,732	17,794	23,875	132,401								
Out of State Travel	7,177	22,405	6,294	35,876	21,936	6,363	8,249	36,548								
Employee Training	2,569	9,933	12,956	25,458	53,067	961	1,260	55,288								
Office Expenses	13,034	30,903	4,419	48,356	37,463	1,266	226	38,955								
Telecomm	5,728	218	9,395	15,341	99,037	-	-	99,037								
State Gov't Svc Chg	255,945	287,998	24,927	568,870	293,785	-	-	293,785								
Data Processing	191,054	-	6,841	197,895	213,787	-	-	213,787								
Publicity & Publications	-	3,154	57,231	60,385	13,716	2,752	18	16,486								
Professional Services	776,280	1,558,824	3,492,630	5,827,734	702,587	861,041	2,933,448	4,497,076								
IT Professional Services	13,500	-	-	13,500	27,838	-	3,735	31,573								
Employee Recruitment	268	1,309	-	1,577	-	-	-	-								
Dues & Subscriptions	1,430	795	2,109	4,334	8,830	15	10	8,855								
Facilities Rent	215,465	167,133	51,767	434,365	353,041	16,324	1,405	370,770								
Fuels & Utilities	-	-	-	-	3,143	-	-	3,143								
Facilities Maintenance	-	-	-	-	113	-	-	113								
Agency Related S & S	-	-	2,500	2,500	2,474	-	1,541	4,015								
Intra agency Charges	-	-	-	-	128	-	-	128								
Other Services & Suppl	154,220	413,821	534,209	1,102,250	(195,235)	224,752	332,590	362,107								
Attorney General	4,640	(655)	-	3,985	49,979	-	(3,595)	46,384								
Undistributed (S&S)	-	-	-	-	-	-	-	-								
Data Processing Hardw	-	-	-	-	23,213	3,128	-	26,341								
Expendable Prop (\$250-	41,514	18,489	27,341	87,344	79,539	443	-	79,982								
IT Expendable Property	161,442	-	28,622	190,064	179,646	10	1,425	181,081								
Technical Equipment	-	-	-	-	79,678	53	-	79,731								
<i>Total Services &amp; Supplies</i>	1,856,187	2,583,813	4,431,760	8,871,760	2,138,497	1,138,636	3,300,451	6,577,584	115%	44%	74%	74%	-15%	56%	26%	26%
<b>Total Expenditures</b>	<b>4,806,968</b>	<b>3,555,228</b>	<b>6,865,670</b>	<b>15,227,866</b>	<b>4,783,570</b>	<b>2,384,081</b>	<b>5,342,678</b>	<b>12,510,328</b>	####	67%	78%	82%	0%	33%	22%	18%
<b>GS&amp;S Ending Balance</b>	<b>\$ -</b>	<b>\$ 1,912,498</b>	<b>\$ -</b>	<b>\$ 1,912,498</b>	<b>\$ 23,398</b>	<b>\$ 1,421,847</b>	<b>\$ 144,721</b>	<b>\$ 1,589,967</b>								
<b>Est. Unallocated Indirect</b>	-	-	-	-	-	-	-	-	####	67%	78%	82%	0%	33%	22%	18%

Mineral Land Regulation & Reclamation (MLRR) Program

Budget Category / Line Item	2015-17 Budget by Funding Source				2015-17 Revenue & Expenditures				Spent Budget				Remaining Budget			
	General	Other	Federal	All	General	Other	Federal	All	All				All			
	Funds	Funds	Funds	Funds	Funds	Funds	Funds	Funds	GF	OF	FF	Funds	GF	OF	FF	Funds
<b>Revenue</b>																
Beginning Balance	-	152,600	-	152,600	-	152,600	-	152,600								
2015-17 Revenue	-	2,979,703	-	2,979,703	-	2,883,123	-	2,883,123								
<b>Total Available Revenue</b>	<b>-</b>	<b>3,132,303</b>	<b>-</b>	<b>3,132,303</b>	<b>-</b>	<b>3,035,723</b>	<b>-</b>	<b>3,035,723</b>	97%		97%		3%		3%	
<b>Expenditures:</b>																
<i>Personnel Services</i>	-	2,216,124	-	2,216,124	-	2,025,581	-	2,025,581	91%		91%		9%		9%	
<i>Services &amp; Supplies</i>																
Instate Travel	-	65,864	-	65,864	-	44,015	-	44,015								
Out of State Travel	-	-	-	-	-	488	-	488								
Employee Training	-	-	-	-	-	6,723	-	6,723								
Office Expenses	-	29,067	-	29,067	-	24,302	-	24,302								
Telecomm	-	44,161	-	44,161	-	36,226	-	36,226								
State Gov't Svc Chg	-	-	-	-	-	-	-	-								
Data Processing	-	-	-	-	-	7,203	-	7,203								
Publicity & Publications	-	3,281	-	3,281	-	15,500	-	15,500								
Professional Services	-	91,305	-	91,305	-	118,701	-	118,701								
IT Professional Services	-	-	-	-	-	3,482	-	3,482								
Attorney General	-	51,373	-	51,373	-	108,254	-	108,254								
Employee Recruitment	-	-	-	-	-	5,000	-	5,000								
Dues & Subscriptions	-	561	-	561	-	295	-	295								
Facilities Rent	-	71,844	-	71,844	-	135,393	-	135,393								
Fuels & Utilities	-	10,629	-	10,629	-	15,287	-	15,287								
Facilities Maintenance	-	10,595	-	10,595	-	6,426	-	6,426								
Agency Related S & S	-	-	-	-	-	301	-	301								
Intra agency Charges	-	-	-	-	-	-	-	-								
Other Services & Suppl	-	32,672	-	32,672	-	40,935	-	40,935								
Undistributed (S&S)	-	-	-	-	-	-	-	-								
Expendable Prop (\$250-	-	4,486	-	4,486	-	15,317	-	15,317								
IT Expendable Property	-	26,115	-	26,115	-	9,432	-	9,432								
<i>Total Services &amp; Supplies</i>	-	441,953	-	441,953	-	593,278	-	593,278	134%		134%		-34%		-34%	
<b>Total Expenditures</b>	<b>-</b>	<b>2,658,077</b>	<b>-</b>	<b>2,658,077</b>	<b>-</b>	<b>2,618,859</b>	<b>-</b>	<b>2,618,859</b>	99%		99%		1%		1%	
<b>MLRR Ending Balance</b>	<b>\$ -</b>	<b>\$ 474,226</b>	<b>\$ -</b>	<b>\$ 474,226</b>	<b>\$ -</b>	<b>\$ 416,864</b>	<b>\$ -</b>	<b>\$ 416,864</b>								
Uncharged Indirect	-	-	-	-	-	-	-	-								
<b>MLRR Ending Balance</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>416,864</b>	<b>-</b>	<b>416,864</b>								

Department of Geology & Mineral Industries  
Budget Status Report: As of November 27, 2017

% of Time Spent 21%	% of Time Remaining: 79%
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Geological Survey & Services (GS&S) Program

Budget Category / Line Item	2017-19 Budget by Funding Source				2017-19 Actual Revenue & Expenditures				Budget Spent				Budget Remaining			
	General Funds	Other Funds	Federal Funds	All Funds	General Funds	Other Funds	Federal Funds	All Funds	GF	OF	FF	All Funds	GF	OF	FF	All Funds
<b>Revenue</b>																
Beginning Balance	-	1,288,080	-	1,288,080	-	-	-	-								
2015-17 Revenue	4,631,168	3,732,066	5,937,915	14,301,149	1,019,335	118,927	650,090	1,788,352								
<b>Total Available Revenue</b>	<b>4,631,168</b>	<b>5,020,146</b>	<b>5,937,915</b>	<b>15,589,229</b>	<b>1,019,335</b>	<b>118,927</b>	<b>650,090</b>	<b>1,788,352</b>	22%	2%	11%	11%	78%	98%	89%	89%
<b>Expenditures:</b>																
<i>Personnel Services</i>	3,002,161	1,171,742	2,678,734	6,852,637	669,630	130,504	392,838	1,192,972	22%	11%	15%	17%	78%	89%	83%	83%
<i>Services &amp; Supplies</i>																
Instate Travel	-	77,224	150,519	227,743	16,949	1,589	6,057	24,594								
Out of State Travel	2,191	22,405	6,294	30,890	1,329	1,612	721	3,662								
Employee Training	7,177	10,556	7,956	25,689	21,548	557	1,731	23,836								
Office Expenses	2,569	32,886	1,419	36,874	2,646	-	1,047	3,693								
Telecomm	10,575	227	9,395	20,197	5,506	-	-	5,506								
State Gov't Svc Chg	88,461	104,843	92,650	285,954	13,682	-	-	13,682								
Data Processing	155,241	-	6,499	161,740	15,821	-	-	15,821								
Publicity & Publications	893,490	4,805	57,231	955,526	120	-	80	200								
Professional Services	-	1,573,602	2,757,369	4,330,971	12,759	161,639	445,954	620,352								
IT Professional Services	6,537	80,000	-	86,537	2,398	-	-	2,398								
Attorney General	-	-	-	-	2,776	-	-	2,776								
Employee Recruitment	4,826	1,350	-	6,176	-	-	-	-								
Dues & Subscriptions	268	922	2,109	3,299	1,893	-	-	1,893								
Facilities Rent	1,430	178,665	55,339	235,434	62,762	-	-	62,762								
Fuels & Utilities	203,312	-	-	203,312	440	-	-	440								
Facilities Maintenance	-	-	-	-	670	-	-	670								
Agency Related S & S	-	-	-	-	940	-	-	940								
Intra agency Charges	-	-	-	-	-	-	-	-								
Other Services & Suppli	-	667,215	56,438	723,653	161,766	-	28,110	189,876								
Undistributed (S&S)	239,807	-	-	239,807	-	-	-	-								
Expendable Prop (\$250-	7,141	18,489	27,341	52,971	-	-	-	-								
IT Expendable Property	5,982	-	28,622	34,604	25,030	-	-	25,030								
Technical Equipment	-	-	-	-	670	-	-	670								
<i>Total Services &amp; Supplies</i>	1,629,007	2,773,189	3,259,181	7,661,377	349,705	165,397	483,700	998,801	21%	6%	15%	13%	79%	94%	85%	87%
<b>Total Expenditures</b>	<b>4,631,168</b>	<b>3,944,931</b>	<b>5,937,915</b>	<b>14,514,014</b>	<b>1,019,334</b>	<b>295,901</b>	<b>876,538</b>	<b>2,191,773</b>	22%	8%	15%	15%	78%	92%	85%	85%
<b>GS&amp;S Ending Balance</b>	<b>\$ -</b>	<b>\$ 1,075,215</b>	<b>\$ -</b>	<b>\$ 1,075,215</b>	<b>\$ 0</b>	<b>\$ (176,974)</b>	<b>\$ (226,448)</b>	<b>\$ (403,422)</b>								

Mineral Land Regulation & Reclamation (MLRR) Program

Budget Category / Line Item	2017-19 Budget by Funding Source				2017-19 Revenue & Expenditures				Spent Budget				Remaining Budget			
	General Funds	Other Funds	Federal Funds	All Funds	General Funds	Other Funds	Federal Funds	All Funds	GF	OF	FF	All Funds	GF	OF	FF	All Funds
<b>Revenue</b>																
Beginning Balance	-	370,374	-	370,374	-	-	-	-								
2015-17 Revenue	-	2,933,296	-	2,933,296	-	564,025	-	564,025								
<b>Total Available Revenue</b>	<b>-</b>	<b>3,303,670</b>	<b>-</b>	<b>3,303,670</b>	<b>-</b>	<b>564,025</b>	<b>-</b>	<b>564,025</b>	17%			17%	83%			83%
<b>Expenditures:</b>																
<i>Personnel Services</i>	-	2,284,030	-	2,284,030	-	517,651	-	517,651	23%			23%	77%			77%
<i>Services &amp; Supplies</i>																
Instate Travel	-	66,724	-	66,724	-	7,224	-	7,224								
Out of State Travel	-	-	-	-	-	113	-	113								
Employee Training	-	69	-	69	-	2,763	-	2,763								
Office Expenses	-	29,287	-	29,287	-	4,771	-	4,771								
Telecomm	-	79,456	-	79,456	-	1,067	-	1,067								
State Gov't Svc Chg	-	-	-	-	-	-	-	-								
Data Processing	-	94,337	-	94,337	-	2,023	-	2,023								
Publicity & Publications	-	3,464	-	3,464	-	160	-	160								
Professional Services	-	91,305	-	91,305	-	19,783	-	19,783								
IT Professional Services	-	-	-	-	-	-	-	-								
Attorney General	-	52,746	-	52,746	-	15,144	-	15,144								
Employee Recruitment	-	5	-	5	-	-	-	-								
Dues & Subscriptions	-	575	-	575	-	200	-	200								
Facilities Rent	-	76,801	-	76,801	-	11,400	-	11,400								
Fuels & Utilities	-	10,629	-	10,629	-	2,160	-	2,160								
Facilities Maintenance	-	10,595	-	10,595	-	1,371	-	1,371								
Agency Related S & S	-	-	-	-	-	-	-	-								
Intra agency Charges	-	-	-	-	-	-	-	-								
Other Services & Suppli	-	32,839	-	32,839	-	-	-	-								
Undistributed (S&S)	-	-	-	-	-	-	-	-								
Expendable Prop (\$250-	-	4,486	-	4,486	-	494	-	494								
IT Expendable Property	-	5,580	-	5,580	-	5,351	-	5,351								
<i>Total Services &amp; Supplies</i>	-	558,898	-	558,898	-	74,027	-	74,027	13%			13%	87%			87%
<b>Total Expenditures</b>	<b>-</b>	<b>2,842,928</b>	<b>-</b>	<b>2,842,928</b>	<b>-</b>	<b>591,678</b>	<b>-</b>	<b>591,678</b>	21%			21%	79%			79%
<b>MLRR Ending Balance</b>	<b>\$ -</b>	<b>\$ 460,742</b>	<b>\$ -</b>	<b>\$ 460,742</b>	<b>\$ -</b>	<b>\$ (27,652)</b>	<b>\$ -</b>	<b>\$ (27,652)</b>								
Uncharged Indirect	-	-	-	-	-	-	-	-								
<b>MLRR Ending Balance</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(27,652)</b>	<b>-</b>	<b>(27,652)</b>								





# Staff Report and Memorandum

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To: Chair, Vice-Chair, and members of the DOGAMI Governing Board

From: Ian Madin, Deputy Director & Chief Scientist

Date: December 4, 2017

**Regarding: Agenda Item 12 – MLRR Update**

Chief Scientist & Deputy Director Ian Madin will provide an update on MLRR and report on the following topics:

- 1) Permitting Status (update included below)
- 2) Oil and Gas – Tahe Well
- 3) Permit Revocation
- 4) Sister Agency Reviews
- 5) New Application Form and Permit
- 6) Double Bonding
- 7) Calico-Grassy Mountain
  - a. Revised Timeline
  - b. Staffing
  - c. Application Process Workshop
- 8) SB 644, HB 2202, and Rulemaking
- 9) Jordan Cove

Permit Update:

Date: 12/4/17

Total Active Applications in Queue				
	Amendment	New	Transfer	Totals
Floodplain	4	4	0	8
Landfill*	0	4	0	4
Issuance pending	2	2	2	6
In Process	8	8	0	16
Number Active	14	18	2	34

Total Permits Received or Issued Since Last Update on September 18, 2017				
	Amendment	New	Transfer	Totals
Received	4	4	3	11
Issued	3	0	4	7

***Proposed Board Action: The Board will not be asked to take an action on this item.***

# Staff Report and Memorandum

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To: Chair, Vice-Chair, and members of the DOGAMI Governing Board

From: Jed Roberts, GS&S Manager

Date: December 1, 2017

**Regarding: Agenda Item 13 - GS&S Update**

GS&S Manager Jed Roberts will provide an update on GS&S.

*Proposed Board Action: The Board will not be asked to take an action on this item.*

# Staff Report and Memorandum

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To: Chair, Vice-Chair, and members of the DOGAMI Governing Board

From: Brad Avy, Director & State Geologist

Date: December 4, 2017

**Regarding: Agenda Item 14 – Director’s Report**

Director Avy will deliver his report on the following topics:

- 1) Board Member Vacancies Update
- 2) Secretary of State 2016 Audit Follow-Up
- 3) Organizational/Staffing Changes
- 4) 2018 Legislative Session

***Proposed Board Action: The Board will not be asked to take an action on this item.***