

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

| | | |
|-----------------------|-------------------------------------|----------------|
| Department of Justice | OAR chapter 137 | |
| Agency and Division | Administrative Rules Chapter Number | |
| Carol Riches | 1162 Court St NE Salem, OR 97301 | (503) 947-4700 |
| Rules Coordinator | Address | Telephone |

RULE CAPTION

Amends Attorney General's Model Rules on Contested Case Hearings, Including Changes Needed to Implement 2007 Legislation

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

| | | | |
|--------------------|-----------|---|------------------|
| September 25, 2007 | 1:00 p.m. | 158 12 th Street NE, Salem, OR 97301 | Kyle Martin |
| Hearing Date | Time | Location | Hearings Officer |

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

AMEND: 137-003-0001; 137-003-0002; 137-003-0070; 137-003-0075; 137-003-0501; 137-003-0505; 137-003-0510; 137-003-0520; 137-003-0525; 137-003-0595; 137-003-0630; 137-003-0665; 137-003-0670; 137-003-0672

Stat. Auth. : ORS 183.341 and 183.502

Other Auth.:

Stats. Implemented: ORS 9.320; ORS 183.341; ORS 183.413; ORS 183.415; ORS 183.470; ORS 183.502; Or Laws 1999, ch 849; HB 2423 (2007)

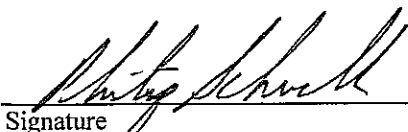
RULE SUMMARY

The proposed rule changes relate to OAR chapter 137, division 003, which contains the Attorney General's Model Rules that relate to contested case hearings. Agencies that do not use the Office of Administrative Hearings (OAH) may adopt these Model Rules without formal rulemaking, but are not required to do so. Hearings for agencies that use the Office of Administrative Hearings are generally governed by OAR 137-003-0501 through 137-003-0700. The proposed changes update the Model Rules to respond to changes in the contested case notice provisions made by the 2007 Legislative Assembly. The proposed changes give agencies the authority to have rules setting out the procedure to assess the cost(s) of an action or proceeding against a party and define "good cause" for purposes of OAR 137-003-0501 to 137-003-0700. The proposed changes add the OAH as an entity that may be notified of a possible threat to anyone involved in the hearing and add authority for the OAH to take measures to ensure the safety and security of the participants of a hearing. The proposed changes amend the timelines for filing and serving motions before the date of a contested case hearing, and require the moving party and agency to confer before filing a motion unless to do so would present a danger or be futile. Motions would be required to recite attempts to confer or explain why no attempt was made. Other changes are made to clarify existing rules.

NOTE: The proposed rules also expand the service requirements for final orders to require that all final orders be served on a represented party and the party's attorney. HB 2423 (2007) mandates such service of final orders in cases resolved by informal disposition. The proposed rules would require service on both the party and the party's attorney, if any, of all final orders that resolve contested cases.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator): September 25, 2007



Philip Schradle, Special Counsel to the Attorney General

Printed name

8/15/07
Date

*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Justice

OAR chapter 137

Agency and Division

Administrative Rules Chapter Number

In the Matter of: Amendments to division 003 of the Attorney General's Model Rules

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Amends Attorney General's Model Rules on Contested Case Hearings, Including Changes to Implement 2007 Legislation

Statutory Authority: ORS 183.341 and 183.502

Other Authority:

Stats. Implemented: ORS 9.320; ORS 183.341; ORS 183.413; ORS 183.415; ORS 183.470; ORS 183.502; Or Laws 1999, ch 849; HB 2423 (2007)

Need for the Rule(s): The changes are needed to update the rules to respond to changes in the contested case notice provisions made by the 2007 Legislative Assembly. The proposals would amend some rules that apply to the Office of Administrative Hearings and some rules that do not. Many changes also respond to questions and concerns raised by users of the rules, including suggestions by the Advisory Committee that reviewed the rules, and to clarify rules.

Documents Relied Upon, and where they are available: Minutes of Advisory Committee meetings of August 13, 2007, available from the Department's Rules Coordinator, Carol Riches, at 1162 Court Street NE, Salem, Oregon 97301.

Fiscal and Economic Impact, including Statement of Cost of Compliance:

Agencies that do not use the Office of Administrative Hearings (OAH) are not required to adopt the Model Rules, including the proposed rules. The proposed rules will have no effect upon agencies that do not adopt them. It seems likely that some agencies will adopt the proposed rules. For those that do, the fiscal impact, if any, will arise from the agency action adopting them or from the legislative changes, but not from these changes to the Model Rules. Units of local government, businesses, and members of the public will be affected by the rule changes if agencies adopt the proposed rules.

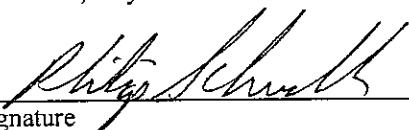
For agencies that do use the OAH, the changes to the Model Rules will generally apply. The fiscal impact for changes required by new legislation arises from the legislative changes, and not from these proposed rules. We are unable to estimate the fiscal impact, if any, of the proposed change defining "good cause" for purposes of OAR 137-003-0501 to 137-003-0700 will have because we cannot predict how that change in procedure will be applied or how often it will be applied. We are also unable to predict the fiscal impact the proposed changes to the timelines for filing and serving motions. We anticipate that requiring the moving party and agency to confer before filing a motion may reduce costs of hearings by reducing the number of motions filed. Parties and agencies will be encouraged to reach agreement without the need for a motion. We do not have sufficient data to quantify this cost savings, because we are unable to predict the number of motions that will be eliminated, if any.

We anticipate that agencies will incur additional costs from the proposed requirement to serve all final orders on both represented parties and their attorneys. The current rules require service upon either the party or the attorney for the party. Service is normally by United States Mail at a cost of \$.41, plus the cost of copies. Agencies would be required to serve two copies instead of one, but only in the small percentage of cases where a party is represented. This additional requirement would double the cost of postage and copies in those cases.

How were small businesses involved in the development of this rule? Small businesses were not involved.

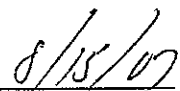
Administrative Rule Advisory Committee consulted?: Yes.

If not, why?:


Signature

Philip Schradle, Special Counsel to the Attorney General

Printed name


Date