

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing accompanies this form.

FILED
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ARCHIVES DIVISION
SECRETARY OF STATE

Bureau of Labor and Industries
Agency and Division

839
Administrative Rules Chapter Number

Hearing 5/15/15, 9-11 am, on amending rule regarding agency response to objections to investigative subpoenas.

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

In the Matter of:

Hearing on May 15, 2015, 9 - 11 am, Portland State Office Building, 800 NE Oregon St. Room 1-D, Portland OR 97232, regarding amendments to rule regarding agency response to objections to investigative subpoenas.

Statutory Authority:

ORS 651.060, 658.220 and 659A.800

Other Authority:

Statutes Implemented:

ORS chapters 279C, 651, 652, 653, 658 and 659A

Need for the Rule(s):

The rule amendment is needed to clarify bureau enforcement divisions' processes for handling objections to investigative subpoenas. The amendment would insure uniform process by divisions by clarifying timelines for submitting objections and for divisions to respond to objections to cost of responding to a subpoena, conserving division resources to be applied as deemed necessary rather than required. Finally the amendment would clearly provide division discretion to communicate with objecting persons to resolve concerns rather than pursuing enforcement through a court, potentially saving respondents and the state money.

Documents Relied Upon, and where they are available:

Oregon Statutes and Oregon Administrative Rules are relied upon, and are available on the bureau's website.

Fiscal and Economic Impact:

The amendment should have a positive fiscal and economic impact on persons served with bureau enforcement division investigative subpoenas by making the objection process more transparent. The amendment should also have a positive impact by providing that a division may communicate with a person objecting to a subpoena to determine whether concerns can be addressed without expensive enforcement of the subpoena in court. The amendment may have a negative fiscal or economic impact on some persons that object to paying the cost of production of documents in that it removes the mandate that the division pay the cost and provides for discretion based on circumstances including financial hardship. However, a significant impact is not expected because experience has been that few persons object on the basis of cost. The fiscal impact of the amendment on the divisions with regard to payment of cost may be positive or negative depending on objections to costs and how the division uses its discretion.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The amendment is not anticipated to increase cost of compliance with respect to bureau enforcement division investigative subpoenas, as these have been in law and rule for several years. The amendment may decrease cost of compliance insofar as it makes the process of objecting to subpoenas more transparent and easier to follow. The cost of compliance regarding production of subpoenaed documents is discussed in Fiscal and Economic Impact.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

All small businesses in Oregon would potentially be subject to the proposed rule amendment because all small businesses are subject to at least some statutory requirements under the bureau's investigative jurisdiction and thus could be served with investigative subpoenas.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

None anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

None anticipated.

How were small businesses involved in the development of this rule?

Small businesses were not directly involved in the development of this rule amendment. However, the proposed amendment would provide transparency in the bureau's investigative subpoena process, that potentially benefits all Oregon businesses, as well as providing agency discretion in resolving objections to subpoenas that may avoid judicial enforcement actions that would be costly to businesses and the state.

Administrative Rule Advisory Committee consulted?: No

If not, why?:

The amendment clarifies the agency's procedures regarding investigative subpoenas; the statutory authority has been in place for several years and has not changed. The amendment would also provide for agency discretion in handling objections to cost of compliance with subpoenas, allowing more equitable use of agency resources in specific cases such as hardship.

<u>05-15-2015 5:00 p.m.</u>	<u>Marcia Ohlemiller</u>	<u>Marcia.L.Ohlemiller@state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address