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**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**BLI 3-2021**  
CHAPTER 839  
BUREAU OF LABOR AND INDUSTRIES

**FILED**  
01/26/2021 12:33 PM  
ARCHIVES DIVISION  
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& LEGISLATIVE COUNSEL

FILING CAPTION: Proceedings on Apprenticeship and Training Division Hearings

EFFECTIVE DATE: 01/26/2021 THROUGH 07/17/2021

AGENCY APPROVED DATE: 01/26/2021

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**NEED FOR THE RULE(S):**

The Apprenticeship and Training Division (Division) has a disciplinary process for addressing a complaint against a committee, apprenticeship committee or training agent (OAR 839-011-0093). If a complaint is filed with the Division against an apprenticeship committee or training agent, the Division must investigate and make a determination. If the Division determines that the party is not operating in compliance with program standards, it must notify and make a reasonable effort to obtain compliance from the party. If the Division is unable to obtain compliance or the party appeals the finding of the Division, the matter is referred to the Oregon State Apprenticeship and Training Council (Council) to conduct a hearing to show cause. Upon conclusion of the hearing, the Council must decide by a majority vote of the members present whether to issue a determination that the apprenticeship committee or training agent is out of compliance with program standards.

At the meeting of the Council on December 17, 2020 representatives for an apprenticeship committee appealed a determination made by the Division that it was out of compliance, requesting a hearing to show cause. However, the Division does not have administrative rules governing the proceedings for hearings because there is no record of the Council having ever conducted hearing to show cause.

Therefore, it is necessary to adopt temporary rules so the parties' subject to the upcoming hearing will have a clear understanding of the hearing proceedings and can participate in equitable and transparent process.

**JUSTIFICATION OF TEMPORARY FILING:**

Failure to take temporary rulemaking action will have negative consequences for the parties' subject to the upcoming hearing. They will not be able to properly prepare, participate, and provide evidence in support of their positions. Ultimately, subjecting the parties to a hearing process that is not transparent, equitable, or just. This could result in a decision that neither party can have confidence in.

Temporary rulemaking action must be taken because it is not possible to complete the statutorily prescribed permanent rulemaking process before for hearing scheduled for March 17, 2021. The permanent rulemaking timeline would not provide the parties a reasonable amount of time to understand, prepare, and comply with the process governing the hearing process. The parties would not be able to prepare and file written statements, supporting exhibits, or statements regarding witnesses with the Administrative Law Judge. Adopting temporary rules will mitigate identified concerns by establishing proceedings for the hearing that are transparent, equitable, and enable all parties to be full participants in the hearing process.

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DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS Chapter 183 - [https://www.oregonlegislature.gov/bills\\_laws/ors/ors183.html](https://www.oregonlegislature.gov/bills_laws/ors/ors183.html);

OAR Chapter 839 Division 50 - <https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=24>

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ADOPT: 839-050-0450

SUSPEND: Temporary 839-050-0450 from BLI 2-2021

RULE SUMMARY: Proceedings on Apprenticeship and Training Division Hearings

CHANGES TO RULE:

839-050-0450

Proceedings on Apprenticeship and Training Division Hearings

(1) This rule sets forth the procedures used in a proceeding to show cause requested pursuant to OAR 839-011-0093(5).¶

(2) Proceedings on apprenticeship and training committee disciplinary procedures are governed by the procedures set forth in OAR 839-050-0000 to 839-050-0430, except to the extent those procedures are modified by this rule. References to the commissioner in OAR 839-050-0000 to 839-050-0430 will be deemed to refer to the Council, unless the context requires otherwise. References to Agency will be deemed to refer to the Division, unless the context requires otherwise.¶

(3) The following definitions apply to this rule:¶

(a) "Council" means the Oregon State Apprenticeship and Training Council.¶

(b) "Determination" means a determination issued by the Council under the provisions of OAR 839-011-0093(5).¶

(c) "Director" means the individual who serves as council secretary and is responsible for the administration of ORS 660.002 to 660.210, including supervision of all office and field staff.¶

(d) "Division" means the Apprenticeship and Training Division of the Bureau of Labor and Industries.¶

(e) "Local Committee" means any registered joint or trades apprenticeship or training committee approved by the Council.¶

(f) "Registered Apprenticeship Program" means a local committee approved by the Council to operate an apprenticeship or training program in a specific occupation.¶

(g) "Registered Pre-Apprenticeship Program" means a training program approved by the Council that prepares individuals for acceptance into a registered apprenticeship program.¶

(h) "Standards" means a written agreement submitted by a local committee and approved by the Council, which sets forth a plan containing all terms and conditions for the qualification, employment and training of apprentices or trainees as set forth in ORS chapter 660.126 and 660.137. ¶

(i) "Training Agent" means an employer or organization approved by a local committee to employ and train apprentices and registered with the Division.¶

(4) When the Director of the Division has issued a referral for a determination and the training agent or local committee requests a hearing, an Administrative Law Judge will be assigned to hear the case and the Contested Case Coordinator will issue a Notice of Hearing on behalf of the Forum to the party that meets the requirements of OAR 839-050-0080(4). Information on contested case proceedings will be provided as required by OAR 839-050-0100.

(5) In lieu of OAR 839-050-0210 and in addition to OAR 839-050-0260, no later than 14 calendar days before the hearing date:

(a) The training agent or local committee will file a written statement identifying all of the party's reasons for contesting the determination, along with all supporting exhibits the party intends to offer at hearing; and

(b) The Agency will file copies of all materials considered during the course of its investigation conducted under OAR 839-011-0093(1)-(4), including any complaint or compliance review that prompted the investigation, a copy of the Agency's determination, and copies of any post-determination compliance efforts or proposed corrective action plans. The Agency will mark these materials and the Agency's determination for identification in the manner set forth in 839-050-0270.

(c) Each party to the proceeding will file written statements containing the names of all persons they propose to call as witnesses at the hearing, along with a statement of how each person's testimony will help the Administrative Law Judge understand the materials provided by the requester under OAR 839-011-0093(1)-(4) or the reasons for the Agency's referral for a determination or is otherwise relevant or material to the proceeding.

(6) The statement, materials, and Agency determination filed pursuant to section (5) of this rule may be received into the record as exhibits.

(7) After reviewing the materials and statements filed pursuant to sections (5) and (6) of this rule, the Administrative Law Judge may issue an interim order finding that the testimony of any proposed witness is irrelevant, immaterial, or unduly repetitious and disallowing the proposed testimony. The Administrative Law Judge may also request that the party or Agency bring additional witnesses to the hearing.

(8) OAR 839-050-0260 shall generally apply to the conduct of the hearing. At hearing, the Agency, as proponent of its determination, will first present evidence in support of its determination. The party will then have an opportunity to explain the reasons that the party contests the determination and to rebut the Agency's evidence. The Agency may then present evidence to rebut evidence presented by the party.

(9) Motions authorized under OAR 839-050-0150(1), (4), (6), (9), (11), and (12) may not be filed in proceedings conducted under this rule.

(10) After the conclusion of the hearing, the Administrative Law Judge will issue a proposed order, if a proposed order is required under OAR 137-003-0060, and the Council will issue a final order on the determination consistent with the requirements of OAR 839-050-0420 and OAR 839-011-0093(5).

Statutory/Other Authority: ORS Chapter 183, ORS Chapter 651.060(4)

Statutes/Other Implemented: ORS 660.120(4)