

Summary of Potential Rule Changes

OAR 690- Division 2 PROTESTS AND CONTESTED CASES

Rule Draft Date: 11/19/2025; Summary Date: 11/19/2025

V2 changes highlighted in yellow. See rule changes for more specific information.

3rd draft dated TBD with revisions highlighted in green: All revisions post 10/16 should be green!

*Items in italics are intended to provide a quick grounding for RAC members and whether a rule change is implementing legislation, a rule update or clarification, a process improvement or some other substantive policy change. OWRD acknowledges that there may be different opinions as to whether an item is a substantive policy change or a rule update and encourages RAC members to review all materials. OWRD has done an initial rough cut in an attempt to assist RAC members per request at the first RAC meeting. Due to the short turnaround to fulfill this request, OWRD cannot assure accuracy.

** Or Laws 2025, ch 282 = House Bill 3342 (water rights transactions); Or Laws 2025, ch 575 = House Bill 3544 (contested cases), ORS 183 = Oregon Administrative Procedures Act (APA).

690-002-0000 Scope and Purpose	Rule summary: Provides clarity on interface with the Administrative Procedures Act.
690-002-0005 Applicability	This rule defines the applicability of these rules to contested case proceedings, including which portions of the bill apply prior to the effective date of the rules due to legislation, as well as which portions of the rules are governed by Or Laws 2025, ch 575. It also specifies that the notice required by Section 24 of Or.Laws 2025, ch 575 be mailed. Rule clarity. Some elements specified in 2025 legislation.
690-002-0010 Definitions	This amendment clarifies existing rule language and provides that “hearing requests,” as used in certain Department statutes and rules, are considered “protests” for the purposes of this Division. Rule clarity/cleanup.
690-002-0023 Agency Representation by Officer or Employee	Modifies rule to make it clear that it is referring to representation as allowed by ORS 183.452 and OAR 137-003-0545.
690-002-0025 Time for Filing Protests for Protests Not Governed by 690-002-0005(2)	This rule is amended to increase efficiency for the Department and protestants by allowing protests/requests for hearing to be filed by electronic mail and to implement Or. Laws, Chapter 282 (2025)’s allowance for electronic filing of documents. The rule is also amended to remove an outdated rule reference and, consistent with the definition of “protest” in 690-002-0010(6), to remove references to “request for hearing” and replace them with “protest.” Some elements specified in 2025 legislation: electronic documents. Rule clarity and cleanup.
690-002-0030 Form and Content of Protest for Protests Not Governed by 690-002-0005(2)	This rule is amended to reflect that it will not apply to protests governed by Or Laws 2025, ch 575. This rule is also amended to require protests to include the protestant’s email address, if the protestant has an email address, and contact information for the protestant’s attorney, if the protestant is represented by an attorney. The detailed statement required for protests covered by this rule is based on the agency’s

	<p>determination that it is required due to the complexity of the contested cases covered by this rule.</p> <p><i>Rule clarity. OWRD identified efficiency improvement. Conforming for 2025 legislation.</i></p>
690-002-0035 Requests for Standing in Matters Involving Applications Made under ORS Chapter 537	<p>This rule is repealed because Or Laws 2025, ch 575, modifies the process for requesting standing and party status. New standardized provisions for requesting party status are proposed in OAR 690-002-0225, rendering this rule obsolete.</p> <p><i>Specified in 2025 legislation.</i></p>
690-002-0075 Scope of Hearing for Hearings Not Governed by 690-002-0005(2)	<p>The header of this rule is amended to clarify that it only applies to hearings not governed by OAR 690-002-0005(2). Removes provision related to issues identified by administrative law judge as it was noted that it was unhelpful and confusing.</p> <p><i>Rule clarity.</i></p>
690-002-0080 Contact Information	<p>This rule is added to require parties to maintain accurate contact information during a contested case proceeding, to ensure efficient communication with the parties. Provides that documents sent by regular mail are presumed received.</p> <p><i>Procedural clarity and efficiency measure.</i></p>
690-002-0085 Method of Filing and Service	<p>This rule is adopted to increase efficiency by establishing a default for electronic service in contested case hearings once they are referred to the Office of Administrative Hearings except where another form of service is required by statute or the Attorney General's model rules for contested case hearings or a party requests to use another permissible form of filing and service. The rule will reduce the need for the Department, the Office of Administrative Hearings, and parties to expend time and resources to document consent to electronic service on a case-by-case basis. In the Department's experience, a large majority of parties have access to and prefer electronic methods of service.</p> <p><i>OWRD identified process/efficiency improvement: electronic document.</i></p>
690-002-0090 Consolidation of Proceedings	<p>This rule is adopted to increase efficiency by either allowing for consolidation into a single proceeding or bifurcation into separate proceedings depending on the nature of the protest(s). The rule allows the department to consolidate or bifurcate prior to referral, and parties to request after referral. OWRD identified process/efficiency improvement.</p>
690-002-0095 Discovery	<p>This rule is adopted to prevent discovery from unduly complicating and interfering with the hearing process in Department contested case hearings while still providing procedures sufficient to ensure the fundamental fairness of such hearings. The limitations in this rule are necessary due to the volume of the Department's caseload and the need for speed in completing Department contested case hearings to resolve disputes related to water use and provide stakeholders and the public with final decisions in a timely manner.</p> <p><i>OWRD identified efficiency improvement.</i></p>
690-002-0105 Requests for Intervention in Hearings Conducted Pursuant to ORS 537.170 or 537.622	<p>Or Laws 2025, ch 575, modifies the process for requesting party status. New standardized provisions for requesting party status are proposed in OAR 690-002-0225 rendering this section obsolete. Propose to repeal this rule.</p> <p><i>Specified in 2025 legislation.</i></p>

690-002-0175 Exceptions to Proposed Orders of the Administrative Law Judge	This rule is amended to clarify that the exceptions must identify the authority for exceptions by requiring citations to the record, rules, policies, or statutes. This rule is also amended to remove the requirement for exceptions to be filed at the Salem office to remove any suggestion that exceptions must be physically delivered to Salem and to implement allowance for electronic filing of documents per Or Laws 2025, ch 282. <i>Some WRD identified process/efficiency improvements. Rule clarity.</i>
690-002-0190 Exceptions to Final Orders of the Director	This rule is amended to remove the requirement for exceptions to be filed at the Salem office to remove any suggestion that exceptions must be physically delivered to Salem and implement allowance for electronic filing of documents per Or Laws 2025, ch 282. <i>Some elements of 2025 legislation. Rule clarity.</i>
690-002-0200 Pre-referral Notice	This rule is adopted to establish notice requirements for referral of protests to the Office of Administrative Hearings. The rule will increase efficiency by requiring provision of the Department's file and encouraging discussions concerning settlement and the issues to be decided at hearing prior to referral. <i>OWRD identified efficiency improvement</i>
690-002-0205 Default hearing schedule	This rule is adopted to implement Or Laws 2025, ch 575, section 2, with respect to establishment of a uniform contested case hearing schedule that does not exceed 180 days. <i>180 days specified in 2025 legislation / other elements not specified but to be established by rule.</i>
OAR 690-002-0210 Form of testimony	This rule is adopted to implement Or Laws 2025, ch 575, section 2, with respect to establishing a preference for testimony to be provided orally . <i>Specified in 2025 legislation</i>
OAR 690-002-0215 Hearing Location	This rule is adopted to implement Or Laws 2025, ch 575, section 2, with respect to establishing a preference for conducting a hearing testimony remotely. <i>Specified in 2025 legislation</i>
OAR 690-002-0220 Protests	The rule is adopted to implement Or Laws 2025, ch 575, section 3a, with respect to establishment of a uniform process for protesting a proposed final order issued by the Department. <i>Some elements specified in 2025 legislation</i>
OAR 690-002-0225 Requests for party status	This rule is adopted to implement Or Laws 2025, ch 575, section 3a with respect to establishing standardized provisions for requesting party status for a contested case after the close of the protest period for a proposed final order. <i>Required by 2025 legislation / what is required is not specified.</i>
OAR 690-002-0230 Notification of protests received	This rule is adopted to establish requirements for notifying the applicant of protests filed. <i>Procedural clarity / not specified in 2025 legislation.</i>
OAR 690-002-0235 Final orders by default	This rule is adopted to implement Or Laws 2025, ch 575, section 3, with respect to proposed final orders becoming final if no protest is filed within 33 days and that a hearing is not required if a protestant defaults or withdraws the protest. <i>Some elements specified in 2025 Legislation</i>

1st draft dated 9/23/2025

2nd draft dated 10/16 with revisions highlighted in yellow.

3rd draft dated 11/19/2025

Division 2

PROTESTS AND CONTESTED CASES

690-002-0000

Scope and Purpose

Contested case hearings for the Water Resources Department are heard by administrative law judges from the Office of Administrative Hearings. The procedural rules for these hearings are provided in OAR 137-003-0501 to 137-003-0700 (the Model Rules of Procedure). The rules in this Division (division 002) are intended to supplement the Model Rules of Procedure by providing additional procedures governing requests for and conduct of contested case hearings. Other divisions of OAR chapter 690 and statutory provisions govern entitlement to a contested case hearing. Contested case proceedings must be conducted in accordance with applicable provisions of ORS chapter 183 that govern contested cases, except as otherwise provided by Or. Laws Chapter 575 (2025) and these division 002 administrative rules, or as otherwise specified in the Department's statutes.

Statutory/Other Authority: ORS 183, 536.027 & 536.029

Statutes/Other Implemented: ORS 183, 536.027 & 536.029; Or. Laws, Chapter 575 (2025)

History:

WRD 6-2006, f. & cert. ef. 10-6-06

WRD 8-1992, f. & cert. ef. 6-24-92, Renumbered from 690-075-0000

WRD 11-1986, f. & ef. 9-30-86

WRD 4-1983, f. & ef. 8-10-83

Rule summary: Provides clarity on interface with the Administrative Procedures Act.

690-002-0005

Applicability

(1) OAR 690-002-0000 through 690-002-0023 and 690-002-0080 through 690-002-0190 apply to all contested case hearings for the Water Resources Department, except for contested case hearings held pursuant to ORS Chapter 539.

(2) OAR 690-002-0200 through 690-002-0235 apply to:

(a) A contested case hearing under a provision of ORS Chapter 537 or 540 that references Or Laws 2025, ch 575, section 2 and 3a.

(b) A contested case hearing on an application related to the use of water under a provision of ORS Chapter 537, 540 or 541 in which the contested case proceeding is provided for in rule or order and the rule or order refers to Or Laws 2025, ch 575, section 2 and 3a.

(3) OAR 690-002-0025 through 690-002-0075 apply to contested case hearings not listed in subsection (2) of this rule, except for contested case hearings pursuant to ORS Chapter 539.

(4) ~~For cases under subsection 2,~~ Except as provided in subsections (5) and (6):

(a) These Division 2 rules apply to contested cases that have not been referred to the Office of Administrative Hearings before April 1, 2026.

(b) The Department shall use the rules in effect at the time of referral for those cases referred prior to April 1, 2026.

(5) ~~For cases under subsection 2,~~ The requirements of Or Laws 2025, ch 575, section 3, governing the filing of protests and requests for party status, apply to protests and requests for party status with deadlines on or after January 1, 2026.

(6) For protests ~~on cases under subsection 2~~ that were pending on or before January 1, 2026, the effective date of this 2025 Act, the Water Resources Department shall provide to applicants, protestants, persons that submitted a request for standing, ~~and persons that have submitted standing statements, and persons that have~~ requested or been granted party status mailed notice of the provisions and requirements of Or Laws 2025, ch 575, section 2 and 3 ~~sections 2 and 3 of this 2025 Act.~~ The notice shall also state that a person that submitted a request for party status before January 1, 2026, need not amend the request. The Department shall provide not less than 90 days after issuance of the notice for:

(a) A person that submitted a request for standing to request party status ~~in an existing contested case proceeding.~~

(b) A protestant in ~~an existing contested case proceeding~~ to amend the protest as necessary to comply with the provisions of Or Laws 2025, ch 575, section 3 ~~section 3 of this 2025 Act.~~ The amended protest may not add issues not raised in the original protest.

(7) For cases not under subsection 2, these rules will apply to protests filed after April 1, 2026.

Statutory/Other Authority: ORS 536.025, 536.027, 183

Statutes/Other Implementation: ORS 183, Or Laws 2025, ch 575

Rule Summary: This rule defines the applicability of these rules to contested case proceedings, including which portions of the bill apply prior to the effective date of the rules due to legislation, as well as which portions of the rules are governed by Or Laws 2025, ch 575. It also specifies that the notice required by Section 24 of Or Laws 2025, ch 575 be mailed.

690-002-0010

Definitions

The following definitions apply to OAR chapter 690, division 002:

(1) "Applicant" means a person filing an application or request for a water use permit, certificate, extension, transfer, or any other right, authorization or review provided by the Department.

(2) "Commission" means the Water Resources Commission.

(3) "Department" means the Water Resources Department.

(4) "Director" means the Director of the Water Resources Department.

(5) "Proof of Service" means a certification by the sender that the document described in the certification was provided to the recipient by hand delivery, by facsimile, by mail, or by electronic mail on a certain date and giving the recipient's name and, as applicable, the address, electronic mail address, or facsimile number to which the document was sent mailed.

(6) "Protest" means a statement expressing disagreement with an action or proposed action by the Department that, under applicable law, may entitle the person filing the protest to become a party to a contested case hearing. For the purposes of this Division, where the Department's statutes and rules provide for the right to request a contested case hearing, the hearing request is considered to be a "protest." ~~Where provided or required by applicable law, a "protest" may include a request for contested case hearing.~~ Except as provided in ORS 543.230, a protest must be in writing.

(7) "Protestant" means any person filing a protest against an action or proposed action.

Statutory/Other Authority: ORS 183.341, 536.025 & 536.027

Statutes/Other Implemented: ORS 183.310 - 183.497, &ORS 536 - 543, Or Laws 2025, ch 575

History:

WRD 6-2006, f. & cert. ef. 10-6-06

WRD 1-1996, f. & cert. ef. 1-31-96

WRD 8-1992, f. & cert. ef. 6-24-92

Rule Summary: This amendment clarifies existing rule language and provides that "hearing requests," as used in certain Department statutes and rules, are considered "protests" for the purposes of this Division.

690-002-0020

Authorized Non-Attorney Representation

A party or limited party participating in a contested case hearing may be represented by an authorized representative in the manner and to the extent provided for in OAR 137-003-0555 of the Attorney General's Model Rules.

Statutory/Other Authority: ORS 183.341, 536.025 & 536.027

Statutes/Other Implemented: ORS 183.341 & 183.457

History:

WRD 6-2006, f. & cert. ef. 10-6-06

WRD 8-1992, f. & cert. ef. 6-24-92, Renumbered from 690-002-0001

WRD 1-1988, f. 1-19-88, cert. ef. 2-23-88

WRD 8-1987(Temp), f. 8-27-87, ef. 8-25-87

690-002-0023

Agency Representation by Officer or Employee

As authorized by the Attorney General pursuant to ORS 183.452, Department officers and employees may ~~appear and participate on behalf of~~ represent the Department and Commission in the following types of contested case hearings:

- (1) Civil penalty hearings under ORS 537.792 and OAR chapter 690 division 225 that may lead to imposition of a fine, well constructor license suspension/revocation, or conditions placed on a well constructor license;
- (2) Civil penalty hearings under ORS 536.900 and OAR chapter 690 division 260 that may lead to imposition of a fine or order directing compliance with regulatory directives;
- (3) Protested water use applications under ORS 537.170 or 537.622 and OAR chapter 690 divisions 77 or 310;
- (4) Protested conversions of minimum perennial streamflows to instream water rights under OAR chapter 690 division 77;
- (5) Requests for reservations of water for future economic development under OAR chapter 690 division 79;
- (6) Reservoir permits issued under ORS 537.409 and exempt reservoirs under ORS 537.405;
- (7) Water right certificates issued under ORS 537.260, 537.270 and 537.505 to 537.795;
- (8) Water right permit and certificate cancellations under ORS 537.139, 537.260, 537.410 to 537.450, and 540.610 to 540.660;
- (9) Water right transfers under ORS 540.520, 540.572 to 540.580 and permit amendments under 537.211;
- (10) Non-FERC hydro projects under OAR 690 division 51 and ORS chapters 543 and 543A;
- (11) Water right permit extension orders under ORS 537.230, 537.248, and 537.630;
- (12) Other contested case hearings where the protested action rests in whole or in part on studies, policy recommendations, or other analysis done by Department staff and which have been approved or authorized by the Department or the Commission; and
- (13) Other individual cases or categories of hearings as approved in writing by the Attorney General on an individual or category basis.

Statutory/Other Authority: ORS 183.341, 536.025 & 536.027

Statutes/Other Implemented: ORS 183.341, 183.452 & 536 - 543

History:

WRD 6-2006, f. & cert. ef. 10-6-06

WRD 2-2000, f. & cert. ef. 5-26-00

WRD 7-1996, f. & cert. ef. 7-23-96

Rule summary: Modifies rule to make it clear that it is referring to representation as allowed by ORS 183.452 and OAR 137-003-0545.

690-002-0025**Time for Filing Protests ~~or Requests for Hearing~~ for Protests Not Governed by OAR 690-002-0005(2)**

- (1) Pursuant to the Model Rules of Procedure, a protest is timely filed only if:
- (a) The protest is filed by the applicable deadline ~~as described in OAR 137-003-0520(98)~~; and
 - (b) The protest includes any statutorily required fees.

(2) Pursuant to the Model Rules of Procedure OAR 137-003-0520(1), a protest request for hearing is considered filed only when actually received by the Department.

~~(3) A person may not file a protest or request for hearing by electronic mail.~~

(3) A person may file a protest by electronic mail to the electronic mail address provided for submission of protests in the notice of agency action or proposed agency action to which the protestant objects. While submittal of documents by electronic mail is preferred, until the Department has an electronic payment system, payments will need to be received by the Department in the mail or in person prior to the deadline.

Statutory/Other Authority: ORS 183.341, 536.025 & 536.027

Statutes/Other Implemented: ORS 183.341, ORS 536 – 543, Or Laws 2025, ch 282

History:

WRD 6-2006, f. & cert. ef. 10-6-06

WRD 1-1996, f. & cert. ef. 1-31-96

Rule Summary: This rule is amended to increase efficiency for the Department and protestants by allowing protests/requests for hearing to be filed by electronic mail and to implement Or. Laws, Chapter 282 (2025)'s allowance for electronic filing of documents. The rule is also amended to remove an outdated rule reference and, consistent with the definition of “protest” in 690-002-0010(6), to remove references to “request for hearing” and replace them with “protest.”

690-002-0030**Form and Content of Protest for Protests Not Governed by 690-002-0005(2)**

(1) Except ~~for protests governed specified in by OAR 690-002-0005(2), and/or~~ as otherwise provided in ~~ORS Chapter 537 and OAR 690 divisions 77 and 310 relating to applications for water rights, in ORS Chapters 543 and 543A and OAR 690 divisions 51, 52, 53 and 54 relating to hydroelectric projects, and in OAR 690, division 17 relating to cancellation of perfected and developed water rights,~~ a protest must be in writing, signed by the protestant or the protestant's attorney or authorized representative, ~~and include any statutory filing fee.~~ A protest must and contain a detailed statement of:

- (a) Facts sufficient to show that the protestant is entitled to the relief or action requested;
- (b) The specific relief or action requested;
- (c) The name and address of the protestant and other person or persons necessary to, or having a direct interest in, the proceeding; ~~and~~
- (d) The electronic mail address of the protestant, if the protestant has an electronic mail address;

(e) The name, address, telephone number, and electronic mail address of the protestant's attorney, if the protestant is represented by an attorney; and

(f) Citation of legal authority or basis for the claim or relief asserted or requested.

(2) Proof of service upon the person or persons whose rights or application are protested shall be attached to the original protest, unless the protestant is the sole applicant for or holder of the right.

Statutory/Other Authority: ORS 183.341, 536.025 & 536.027

Statutes/Other Implemented: ORS 183.341, ORS 536 — 543, Or Laws 2025, ch 575

History:

WRD 6-2006, f. & cert. ef. 10-6-06

WRD 1-1996, f. & cert. ef. 1-31-96

WRD 8-1992, f. & cert. ef. 6-24-92, Renumbered from 690-001-0010

WRD 11-1986, f. & ef. 9-30-86

WRD 8-1978, f. & ef. 10-18-78

WRD 4-1978, f. & ef. 5-22-78

Rule Summary: This rule is amended to reflect that it will not apply to protests governed by Or Laws 2025, ch575. This rule is also amended to require protests to include the protestant's email address, if the protestant has an email address, and contact information for the protestant's attorney, if the protestant is represented by an attorney. The detailed statement required for protests covered by this rule is based on the agency's determination that it is required due to the complexity of the contested cases covered by this rule.

690-002-0035

Requests for Standing in Matters Involving Applications Made under ORS Chapter 537

~~(1) Any person who supports a proposed final order issued pursuant to ORS 537.153 or 537.621 may request standing by complying with OAR 690-310-0160.~~

~~(2) Any person who has filed a request for standing may later file a petition for participation as a party or limited party in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 690-002-0105.~~

~~(3) If no protest is filed, and the department does not change the proposed final order, the director must refund the standing fee.~~

Statutory/Other Authority: ORS 183.341, 536.025 & 536.027

Statutes/Other Implemented: ORS 537.153 & 537.621

History:

WRD 6-2006, f. & cert. ef. 10-6-06

WRD 1-1996, f. & cert. ef. 1-31-96

Rule Summary: This rule is repealed because Or Laws 2025, ch575 modifies the process for requesting standing and party status. New standardized provisions for requesting party status are

proposed in OAR 690-002-0225, rendering this rule obsolete. For rules not governed by 225, the model rules govern requests for party status in OAR 137-003.

690-002-0075

Scope of Hearing for Hearings Not Governed by 690-002-0005(2)

The issues to be considered in a contested case hearing are limited to issues timely raised by the parties in any protests, and requests for hearing or requests for standing ~~and as identified by the administrative law judge~~ as allowed by applicable law.

Statutory/Other Authority: ORS 183.341, 536.025 & 536.027

Statutes/Other Implemented: ORS 183.341 & 536 - 543

History:

Rule Summary: The header of this rule is amended to clarify that it only applies to hearings not governed by OAR 690-002-0005(2). ~~Removes provision related to issues identified by administrative law judge as it was noted that it was unhelpful and confusing.~~

690-002-0080

Contact Information

~~(1) Parties must timely provide the Department with updated contact information, including any change of address or primary means of electronic communication. The contact information provided in the protest or request for party status is presumed to be valid for the purposes of service and notification of upcoming referral to the Office of Administrative Hearings, unless timely updated by the party.~~

~~(2) Regardless of other provisions in this Division, documents served or filed by the Department or Commission through the U.S. Postal Service by regular mail are presumed to have been received, subject to evidence to the contrary.~~

Statutory/Other Authority: ORS 183.341, 536.025 & 536.027

Statutes/Other Implemented: ORS 183.341 & 536 – 543

Rule Summary: This rule is adopted to require parties to maintain accurate contact information during a contested case proceeding, to ensure efficient communication with the parties. ~~Provides that documents sent by regular mail are presumed received.~~

690-002-0085

Method of Filing and Service After Referral

After referral, electronic filing and service is the default method of filing and service for contested case proceedings subject to this Division, except:

(1) if another form of service is required by statute or OAR 137-003-0501 through -0700, or

(2) if a party informs the Department prior to referral, or the ~~and~~ Office of Administrative Hearings after referral, that the party will be using another method of filing and service permitted

under OAR 137-003-0501 through –0700 and/or requests to be served using another method of service permitted under OAR 137-003-0501 through –0700.

Statutory/Other Authority: ORS 183.341, ORS 536.025 & 536.027

Statutes/Other Implementation: ORS 183.341, ORS 536 -543

Rule Summary: This rule is adopted to increase efficiency by establishing a default for electronic service in contested case hearings once they are referred to the Office of Administrative Hearings except where another form of service is required by statute or the Attorney General’s model rules for contested case hearings or a party requests to use another permissible form of filing and service. The rule will reduce the need for the Department, the Office of Administrative Hearings, and parties to expend time and resources to document consent to electronic service on a case-by-case basis. In the Department’s experience, a large majority of parties have access to and prefer electronic methods of service.

690-002-0090

Consolidation of Proceedings

One or more proposed Department actions may be consolidated into a single proceeding or bifurcated into separate proceedings at the Department’s discretion. If, prior to referral, the Department has decided on consolidation or bifurcation, the Department shall notify the parties and the Office of Administrative Hearings of its decision. A party may file a motion with the administrative law judge to consolidate or bifurcate if the Department has not notified the parties of a decision prior to referral.

Statutory/Other Authority: ORS 183.341, ORS 536.025, ORS 536.027

Statutes/Other Implementation: ORS 183.341, ORS 536 - 543

Rule Summary: This rule is adopted to increase efficiency by either allowing for consolidation into a single proceeding or bifurcation into separate proceedings depending on the nature of the protest(s). The rule allows the department to consolidate or bifurcate prior to referral, and parties to request after referral.

690-002-0095

Discovery

(1) Requests for admission are not an available method of discovery in contested cases subject to these rules.

(2) An administrative law judge may not order responses to more than **10** 5 interrogatories (each subpart to count as a separate interrogatory) in a contested case subject to these rules without the Department’s written consent.

(3) Requests for production of documents are an available method of discovery in contested cases subject to these rules; provided, however, that if the Department determines that the combined response time to a party’s requests for production of documents made to the Department would exceed **2530** hours of staff time, the Department may require the requesting party to make a public records request in lieu of a request for production of documents. If the

Department requires a public records request and an exemption from disclosure would apply to the public records request but not to a discovery request, the Department will not apply the exemption. The Department will not charge applicable public records fees for the first 2530 hours of staff time.

(4) ~~An administrative law judge may not order a site visit in a contested case subject to these rules without the Department's written consent. A site visit requires the consent of the Department, the parties, and the administrative law judge.~~

(5) Subpoenas for the production of documents made to any party, or to any employee or agent of any party, must be issued no later than ~~the deadline for filing a motion to compel~~:

~~(a) two weeks after the deadline for filing a motion to compel, if the issuing party did not file a motion to compel; or~~

~~(b) two weeks after the administrative law judge's ruling on the motion to compel, if the issuing party did file a motion to compel.~~

(6) A public records request ~~made to the Department~~ is not a basis for the extension of a hearing schedule if:

~~(a) it is made more than two weeks after the deadline for filing a motion to compel, if the requestor did not file a motion to compel; or~~

~~(b) it is made more than two weeks after the administrative law judge's ruling on a motion to compel, if the requestor filed a motion to compel.~~

Statutory/Other Authority: ORS 536.027, ORS 183.630; OAR 137-003-0566(2)

Statutes/Other Implementation: ORS 536.027, ORS 183.630; OAR 137-003-0566(2)

Rule Summary: This rule is adopted to prevent discovery from unduly complicating and interfering with the hearing process in Department contested case hearings while still providing procedures sufficient to ensure the fundamental fairness of such hearings. The limitations in this rule are necessary due to the volume of the Department's caseload and the need for speed in completing Department contested case hearings to resolve disputes related to water use and provide stakeholders and the public with final decisions in a timely manner.

690-002-0105

Requests for Intervention in Hearings Conducted Pursuant to ORS 537.170 or 537.622

~~(1) Persons who previously requested and obtained standing under the provisions of ORS 537.153(5) or 537.621(6), and OAR 690-002-0035 may file a request to participate as parties or limited parties in the contested case hearing in which standing was obtained following the procedures in OAR 137-003-0535.~~

~~(2) In contested cases conducted pursuant to ORS 537.170 or 537.622, the Administrative Law Judge may only allow persons who have timely filed a request for standing to intervene in the case pursuant to OAR 137-003-0535.~~

Statutory/Other Authority: ~~ORS 183.341, 536.025 & 536.027~~

Statutes/Other Implemented: ~~ORS 183.341, 537.170 & 537.622~~

History:

~~WRD 6-2006, f. & cert. ef. 10-6-06~~

~~WRD 1-1996, f. & cert. ef. 1-31-96~~

Rule Summary: Or Laws 2025, ch575 modifies the process for requesting party status. New standardized provisions for requesting party status are proposed in OAR 690-002-0225 rendering this section obsolete. Propose to repeal this rule.

690-002-0175

Exceptions to Proposed Orders of the Administrative Law Judge

(1) If the recommended action in the proposed order issued by the Administrative Law Judge is adverse to any party or the Department, the party or Department may file exceptions and present argument to the Department. Exceptions must be in writing, clearly and concisely identify the portions of the proposed order excepted to, and cite to appropriate portions of the record, ~~or to~~ Commission policies, rules, or statutes which the party contends support the requested modifications. ~~to which modifications are sought.~~

(2) Parties must file their exceptions with the Department ~~at its Salem offices,~~ by any method allowed in the notice of appeal rights provided in the proposed order.

(3) A party must file any exceptions within 30 days following the date of service of the proposed order on the parties to the contested case proceeding.

(4) Unless otherwise required by law, the Director must consider any exceptions to the proposed order and issue a final order.

(5) If the applicable law provides for the Commission to review any exceptions or issue the final order, the Commission may form a subcommittee to review the exceptions and provide a report prior to the Commission issuing a final order.

Statutory/Other Authority: ORS 183.341, 536.025 & 536.027

Statutes/Other Implemented: ORS 183.341, 183.470 & 536 – 543

History:

WRD 6-2006, f. & cert. ef. 10-6-06

WRD 2-2000, f. & cert. ef. 5-26-00

WRD 1-1996, f. & cert. ef. 1-31-96

Rule Summary: This rule is amended to clarify that the exceptions must identify the authority for exceptions by requiring citations to the record, rules, policies, or statutes. This rule is also amended to remove the requirement for exceptions to be filed at the Salem office to remove any suggestion that exceptions must be physically delivered to Salem and to implement the allowance for electronic filing of documents under Or Laws 2025, ch 282.

690-002-0190

Exceptions to Final Orders of the Director

(1) Any party to a contested case hearing held pursuant to ORS 537.170 or 537.622 may file exceptions to a final order.

(a) Parties must file their exceptions with the ~~Department at its Salem offices, in person, by mail such that they arrive by the deadline, or by electronic mail or other electronic means provided by the Department by any method allowed in the notice of appeal rights provided in the final order.~~

(b) The party must file any exceptions within 20 days following the date of service of the final order on the parties to the contested case proceeding.

(2)(a) If a party files an exception to a final order under subsection 1, the Department must refer the exceptions to the Commission.

(b) The Commission must consider the party's arguments contained in its exceptions filed pursuant to subsection (a), and may allow and consider oral arguments by all parties to the contested case hearing, prior to issuing a final order on exceptions.

(c) The Commission may form a subcommittee to review the exceptions and provide a report to the Commission.

(3) Where exceptions are timely filed to the final order, within 60 days from the close of the exception period, the Commission must either issue a modified final order or deny the exceptions and affirm the final order.

Statutory/Other Authority: ORS 183.341, 536.025 & 536.027

Statutes/Other Implemented: ORS 183.341, 537.173 & 537.626

History:

WRD 6-2006, f. & cert. ef. 10-6-06

Rule Summary: This rule is amended to remove the requirement for exceptions to be filed at the Salem office to remove any suggestion that exceptions must be physically delivered to Salem and implement the allowance for electronic filing of documents under Or Laws 2025, ch 282.

690-002-0200

Pre-referral Notice

The Department will notify the parties prior to referring a protest to the Office of Administrative Hearings. The Department's notice will include a copy of the agency's file, an offer to engage in settlement discussions, a proposed list of issues to be determined at hearing, and the default hearing schedule provided in OAR 690-002-0205.

Statutory/Other Authority: ORS 536.025, ORS 536.027

Statutes/Other Implementation: ORS 536 - 543

Rule Summary: This rule is adopted to establish notice requirements for referral of protests to the Office of Administrative Hearings. The rule will increase efficiency by requiring provision of the Department's file and encouraging discussions concerning settlement and the issues to be decided at hearing prior to referral.

[NOTE: ITEMS IN () ARE PROVIDED FOR THE RAC'S CONVENIENCE AND WILL BE REMOVED IN THE FINAL RULE]

690-002-0205

Default hearing schedule

Unless extended pursuant to Or. Laws, Chapter 575 (2025), section 2(5) or altered by agreement of the parties, the Department, and the administrative law judge, the following deadlines apply to contested case proceedings governed by these rules. For any referral that is submitted in compliance with OAR 137-003-0515, deadlines are counted from the date of the Department's referral to the Office of Administrative Hearings. Any of the listed events may occur prior to the applicable deadline.

Written objections to proposed issue list provided with notice of referral: 744 days

Written responses to objections to proposed issue list: 14 24 days

Discovery requests: 14 days

Prehearing conference: 284 days

Order on prehearing conference, including issues list: 28 35 days (14-day window)

Discovery requests: 35 42 days (7-day window)

Discovery responses: 44 56 64 days (30 21 22-day window)

Motions to compel discovery: 58 63 71 days (147-day window)

Responses to motions to compel: 65 70 78 days (7-day window)

Order on motion to compel: 75 80 88 days (10-day window)

Motions for Summary Determination: 89 94 102 days (14-day window)

Responses to Motions for Summary Determination: 110 115 116 days (21 14-day window)

Ruling on Motions for Summary Determination: 150 155 156 days (40-day window)

Exhibits and witness lists: 160 165 166 days (10-day window)

Hearing complete (Evidentiary record closed): 180 days (approximately 14-19 10-14 day window between exhibits and hearing start)

Statutory/Other Authority: Or Laws 2025, ch 575, section 2(10)

Statutes/Other Implementation: Or Laws 2025, ch 575, section 2(4)

Rule Summary: This rule is adopted to implement Or Laws 2025, ch 575, section 2, with respect to establishment of a uniform contested case hearing schedule that does not exceed 180 days.

OAR 690-002-0210

Form of testimony

An administrative law judge shall, to the greatest extent practicable, give preference to require testimony to be being provided orally rather than in writing 3.

Statutory/Other Authority: Or Laws 2025, ch 575, section 2(10)

Statutes/Other Implementation: Or Laws 2025, ch 575, section 2(6)

Rule Summary: This rule is adopted to implement Or Laws 2025, ch575, section 2, with respect to establishing a preference for oral testimony to be provided orally.

OAR 690-002-0215

Hearing Location

The administrative law judge shall determine the venue for conducting the hearing, subject to the approval of the Water Resources Department, and shall give preference to conducting a hearing by a remote method.

Statutory/Other Authority: Or Laws 2025, ch 575, section 2(10)

Statutes/Other Implementation: Or Laws 2025, ch 575, section 2(7)

Rule Summary: This rule is adopted to implement Or Laws 2025, ch 575, section 2, with respect to establishing a preference for conducting a hearing testimony remotely.

OAR 690-002-0220

Protests

(1) Unless a timeline is otherwise specified under ORS Chapter 537, 540 or 541, protests must be submitted within 45 days after publication of the notice of the proposed final order in a weekly public notice of the Water Resources Department or, if weekly public notice is not required, within 45 days after issuance of notice of the proposed final order. Protests governed by these rules are considered submitted only when actually received by the Department.

(2) Protests actually received after the deadline for submission will not be accepted by the Department. OAR 137-003-0528(1) does not apply to protests governed by these rules.

(3) Protests governed by these rules must meet the requirements of Or Laws 2025, ch 575, section 3a. In addition, protests governed by these rules must:

(a) Include the electronic mail address of the protestant, if the protestant has an electronic mail address.

(b) Include the name, address, telephone number, and electronic mail address of the protestant's attorney, if the protestant is represented by an attorney.

(c) Include any required fees.

(4) A person may file a protest by electronic mail to the electronic mail address provided for submission of protests in the notice of agency action or proposed agency action to which the protestant objects.

Statutory/Other Authority: Or Laws 2025, ch 575, section 3a

Statutes/Other Implementation: Or Laws 2025, ch 575, section 3a

Rule Summary: The rule is adopted to implement Or Laws 2025, ch 575, section 3a, with respect to establishment of a uniform process for protesting a proposed final order issued by the Department.

OAR 690-002-0225

Requests for party status

(1) OAR 137-003-0535 does not apply to requests to participate as parties or limited parties in contested case proceedings governed by ~~these rules~~this rule.

(2) Any person who supports the proposed final order may file a request for party status for the purpose of participating in any contested case proceeding on the proposed final order or for judicial review of a final order resulting from the proposed final order.

(3) Party status requests must be filed within 30 days after the deadline for filing a protest.

(4) Party status requests are considered filed only when actually received by the Department.

(5) The request for party status must be in writing and must include:

(a) Names, addresses, and electronic mail addresses (if any) of the requestor and of any organization the requestor represents;

(b) Name, address, and electronic mail address of the requestor'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 requestor seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the requestor's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;

(e) If the requestor 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 requestor'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.

(g) The fees described in ORS 536.060(1)(n) and (o).

(6) A person may file a request for party status by electronic mail to the electronic mail address provided for submission of protests in the notice of agency action or proposed agency action.

(76) The Department shall serve a copy of the request on each party by electronic mail, or, if a party does not have an electronic mail address, personally or by mail. Each party shall have seven calendar days from the date of personal or electronic mail service or agency mailing to file a response to the request.

(78) The Department shall rule on requests for party status within 60 days of the deadline for submitting party status requests. The Department's ruling on a request for party status shall be by written order and served promptly on the requestor, all parties, and, if the matter has been referred at the time the request is received, the Office of Administrative Hearings. If the request is allowed, the agency shall also provide the requestor with the notice of rights required by ORS 183.413(2) or request the administrative law judge to do so.

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

(a) Whether the requestor 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 requestor to represent that interest; and

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

(109) The Department may treat a request to participate as a party as if it were a request to participate as a limited party.

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

(12) If the Department does not grant the request, the agency shall refund the fees described in ORS 536.050 (1) (o), pursuant to Or Laws 2025, ch 575, section 3a(6).

Statutory/Other Authority: Or Laws 2025, ch 575, section 3a

Statutes/Other Implementation: Or Laws 2025, ch 575, section 3a

Rule Summary: This rule is adopted to implement Or. Laws, Chapter 575 (2025) section 3a with respect to establishing standardized provisions for requesting party status for a contested case after the close of the protest period for a proposed final order.

OAR 690-002-0230

Notification of protests received

Within 20 days after the close of the protest period, if the protestant is not the applicant, the Department shall send a copy of all protests timely received to the applicant.

Statutory/Other Authority: ORS 536.025 & 536.027

Statutes/Other Implementation: ORS 537, 540, 541

Rule Summary: This rule is adopted to establish requirements for notifying the applicant of protests filed.

OAR 690-002-0235

Final orders by default

(1) If no protest on a proposed final order that is governed by these rules is timely received, by operation of law, the proposed final order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the Department.

(2) If all timely filed protests are withdrawn and the withdrawals are not based on a settlement agreement requiring changes to the proposed final order, the Department, if the matter has not been referred to the Office of Administrative Hearings, or the assigned administrative law judge, if the matter has been referred to the Office of Administrative Hearings, shall issue an order dismissing the request for hearing and notifying the parties that the Department's proposed final order is final, as of the date of the order of dismissal.

(3) If all protestants to a contested case default as provided in OAR 137-003-0672(3)(b) or OAR 137-003-0672(3)(c), the assigned administrative law judge shall issue an order dismissing the request for hearing and notifying the parties that the Department's proposed final order is final, as of the date of the order of dismissal.

Statutory/Other Authority: ORS 183, Or Laws 2025, ch 575, section 3a

Statutes/Other Implementation: ORS 183, Or Laws 2025, ch 575, section 3a

Rule Summary: This rule is adopted to implement Or Laws 2025, ch 575, section 3, with respect to proposed final orders becoming final if no protest is filed within 33 days and that a hearing is not required if a protestant defaults or withdraws the protest.