

**Proposed Rule Revision Tracker****Division 2 – PROTESTS AND CONTESTED CASES***Yellow=changes made in v2 draft.**Dark Green=changes made in v3 draft.*

<b>Section / Version comment</b>	<b>Issue</b>	<b>Response/Modified Language</b>	<b>Status / Version change made in</b>
<b>690-002 (Division level issues)</b> 9/5 Draft.	RACM - This section is complicated and RACM members most likely will need legal guidance to evaluate.	OWRD agreed that there would be the need and an opportunity to revisit Division 2; OWRD convening subgroup meeting focused solely on Div 2	Complete. Meeting conducted.
<b>690-002 (Division level issues)</b> 9/5 Draft.	RACM - Implementation of HB 3544 appears to be less well thought out than implementation of HB 3342	Thank you for the feedback. OWRD is still working through implementation details of both bills. As the RAC flags items for us to consider, we will add it to our implementation list.	Complete. No change made.
<b>690-002 (Division level issues)</b> 9/5 Draft.	RACM - Implementation of HB 3544 appears to be less well thought out than implementation of HB 3342; also, why implement process improvements not spelled out by legislation?	There is an expectation from OWRD director, legislature, and Governor that OWRD make progress on contested case backlog as well as water right transactions.	Complete. No change made.
<b>690-002 (Division level issues)</b> 9/5 Draft.	RACM - Can we add a section to the rules that makes it clear for those people already in the queue that the new rules do not apply?	OWRD responded that they would provide guidance online as well as directions for accessing the archived rules.	Implementation item. No change made.
<b>690-002-0000</b> 9/5 Draft.	<p>RACM - Examples of potential conflicts include</p> <ul style="list-style-type: none"> <li>• OAR 690-002-0000 (which is not being changed) provides that "[c]ontested case hearings for [OWRD] 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 [OAR chapter 690, division 2] are intended to supplement the Model Rules of Procedure by providing additional procedures governing requests for and conduct of contested case hearings."</li> </ul> <p>OAR chapter 137, division 3 has its own discovery rules. OWRD can deviate from those rules, but only in specified ways. For instance, OWRD may "provide by rule that</p>	OWRD does not see a conflict based on the information provided; the information seems to support and explain what OWRD is doing.	Complete. No change made.

	some or all discovery methods ... 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." OAR 137-003-0566(2).		
<b>690-002-0005</b>	OWRD Staff: Need to clarify which provisions apply to subsection 2 cases, vs all other cases. Need to specify effective date for those not covered by section 2.	Changed.	Complete. Rule change made in v3.
<b>690-002-0005</b> 9/5 Draft.	RACM - "this 2025 Act" - should be updated.	Change made.	Complete Changed 10/16 draft.
<b>690-002-0005</b> 9/5 Draft.	<p>RACM - If the purpose of the rule changes is to create a uniform process across the board, the current proposed rules are confusing. Some of the statutes weren't called out in the HB 3544 (2025) or HB 3342 (2025). They also have no statutory authority or direction on protests, e.g., hydro conversions. Although there is nothing in statute allowing for protests or standing statements, the state decided to put that in Division 54. This is confusing if we aren't consistent across the board. What is the point the Department is making regarding the APA? I.e., if OWRD is saying the APA allows for changes across the board, then why can't OWRD make changes across the board here to decrease confusion.</p> <p>RACM - As we noted in meetings #1 and #2, except in cases where there are specific statutory provisions to the contrary, WaterWatch would encourage the OWRD to make these rules applicable to all water related contested cases, including hydro conversions, for consistency and to avoid confusion.</p>	See discussion on this in Divisions 52, 53, 54 rule responses.	Complete. See hydro rules.
<b>690-002-0005</b> (6) 9/5 Draft.	RACM - What standards re: protests apply in this case?	This is outlined in the statute. See section 3(1)(c) of HB 3544	Complete. No change made.

<b>690-002-0005</b> (6) 9/5 Draft.	RACM - If someone seeks standing, but the case is not advanced to OAH by April 1, 2026 (see (4)(a), how do you go from standing to party status?	See section 24 of HB 3544 and section 6 of the rule, which states that the Department shall provide notice to any person that submitted a request for standing and shall provide not less than 90 days after issuance of the notice for a person to request party status.	Complete. No change made.
<b>690-002-0005</b> (6) 9/5 Draft.	RACM - Given later sections on electronic notice, need to clarify here that first contact with past protestants will be via mail given previous protest requirements did not include email.	We must send notice of the new law changes. Clarified in subsection 6 that this notice must be mailed. Change in section - 0085 pertaining to electronic default also addresses this comment because it makes clear the default for electronic is only after referral to OAH.	Complete. Rule change made in v2.
<b>690-002-0005</b> (6)(a) 9/5 Draft.	RACM - “in an existing contested case proceeding” seems to lack of clarity regarding what an existing contested case proceeding is.  RACM - Need to clarify “in an existing contested case proceeding” means that a contested case proceeding starts when a protest is submitted, not when it is referred (if this is what OWRD means). There also needs to be consistency on this point both with the Div 300 rules and ORS 183.310.	OWRD deleted “in an existing contested case proceeding”. While this term is used in statute, it is not necessary. Who this applies to is already defined in section 2, 4, 5, and 6.	Complete. Rule change made in v3.
<b>690-002-0005</b> 9/5 Draft.	RACM - Is reference to APA ORS 183 appropriate as statutory implementation?	ORS 183 reference is appropriate, which is the administrative procedures act.	Complete. No change made.
<b>690-002-0005</b> 9/5 Draft.	Also, we suggest some language about the extent to which OAR Division 137 continues to apply, and making it clear that, unless HB 3544 says otherwise, ORS Chapter 183 continues to apply.	OWRD has added an adapted version of Section 2(3) of HB 3544 to 0000, which is where the interface with the model rules is addressed.	Complete. Rule changed in v3.
<b>690-002-0005</b> v2	RACM - For consistency, we suggest making rules/process (e.g., pfo, protest, petitions for party status, contested case) applicable to all OWRD/OWRC decisions by order. We recognize HB 3544 limited its applicability to particular chapters, but we don't read it as precluding OWRD from extending these rules to other agency decision making by order, including decision making under ORS 543A on conversion of hydroelectric rights	OWRD does not believe the reading of section(2)(2), section (2)(3), and section (3)(1)(b) of HB 3544 supports such an interpretation. We believe it does not include hydro in 543 or 543A.	Complete. No change made.

	to in stream water rights, which does not define the process for decision making.		
<b>690-002-0010</b> (5) 9/5 Draft	OWRD Change: Rule allows proof of service by fax, mail, hand delivery or electronic mail, but does not require the associated info with any of those types of methods except an address.	Adds, “as applicable, the address, electronic mail address, or facsimile number,”	Complete. Changed 10/16 draft.
<b>690-002-0010</b> (5) 9/5 Draft.	RACM - Change “...to which the document was mailed.” to “...to which the document was sent.”	Change made.	Complete. Changed 10/16 draft.
<b>690-002-0023</b> 9/5 Draft.	RACM - Intro passage does not align with statute  RACM - Comment on proposed “may appear and participate”: ORS 183.452 is about when an agency “can be represented at contested case hearing” by an agency employee (for example, Will Davidson cross examining a witness). The words “may appear and participate” seems broad enough to include agency employees as witnesses, but the draft language then seeks to limit what kinds of cases they can appear. It is unclear what OWRD is trying to do here.	This is an existing rule that has not been changed. While we think the rule is clear, we have made one modification to address the concerns.	Complete. Rule change v3 draft.
<b>690-002-0025</b> (3) 9/5 Draft.	RACM - How does Dept ensure receipt of electronic documents?  RACM - What constitutes timely electronic payment?  RACM - What incentive is there to file electronically if payment must still occur by check in the mail?  RACM - Are we setting people up for failure because they will file last minute and expect to be able to pay simultaneously?  RACM - We support the ability to file electronically. However, the rule should also specify how to comply with (1)(b) (payment of fee) when one files electronically. We would also suggest provisions requiring OWRD to immediately acknowledge receipt of electronic filing and payment. Suggest amending sub (3) to read something like: (3) A person may file a protest by electronic mail to the electronic mail address provided for submission of protests in the notice	RAC MTG: OWRD does provide an email receipt; however, timely payment is when the check is received; OWRD is investigating electronic payment options.  POST RAC: Added to the rules: 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.  OWRD is investigating electronic payment options but cannot provide a timeline yet on when those may be operative.	Complete. Partial change in v3.  <b>Will discuss with RAC</b>

	of agency action or proposed agency action to which the protestant objects. A protestant filing a protest electronically may pay the statutorily required fee by including in the protest an authorization for the Department to deduct the fee from the protestant's Customer Account, or XXX		
<b>690-002-0025</b> 9/5 Draft.	RACM - OWRD provide an "auto-receipt" message when an email filing goes through to avoid problems related to technical issues preventing receipt by the agency.  RACM - Is there an auto-email receipt?	This is an implementation item. OWRD has put it on our implementation tracking list.	Implementation item. No change made.
<b>690-002-0030</b> (1) 9/5 Draft.	RACM - To the extent not dictated by other statutes, the Department ensure consistency across programs for form and content. E.g., although standing was removed in the hydro rules, the relevant statute does not have a protest provision.  RACM members suggested the Department check to make sure 690-052-110 & 690-053-040 & 690-002-0030 all work together, i.e., look at cross references.  RACM - As stated previously, to the extent not dictated by statute, we believe that the protest and request for party status provisions should be consistent across all processes so as to avoid confusion, promote uniformity of process and gain efficiencies. For example, the hydroelectric conversion statutes do not set forth direction on protest, so the OWRD could and should not put those in this section to be guided by an alternative process (addition of ORS 543).	See discussion on this in Divisions 52, 53, 54 rule responses. Note one change made in 690-002-0030 (1) to clarify what rule divisions are exempted for hydro.	Complete. Rule changed in v3. See also response in hydro rules.  <b>Will discuss with RAC</b>
<b>690-002-0075</b> 9/5 Draft.  690-002-0075 v2	RACM - "and as identified by the administrative law judge" is confusing.  RACM - We would suggest cutting the qualifier "and as identified by the administrative law judge as allowed by applicable law". In our experience, it adds confusion about the authority of an ALJ to add to, or subtract from, issues raised in protests, etc.	Complete. Language struck.	Complete. Change made in v3.

	RACM - Remove the qualifier “and as identified by the administrative law judge as allowed by applicable law because it is unhelpful; confusing.		
<b>690-002-0080</b> (2) 9/5 Draft.	<p>RACM - Why documents served through USPS presumed “received,” given how unreliable mail service often is? Why does the presumption not work in both directions (i.e., documents put into the mail by applicants are presumed received)?</p> <p>RACM - what qualifies as “subject to evidence to the contrary”?</p>	OWRD took this provision from a DEQ rule. OWRD has deleted it based on RAC feedback.	Complete. Rule changed in v3.
<b>690-002-0085</b> (3) 9/5 Draft.	<p>RACM - We would suggest adding a subsection (3): For protests, standing statements and petitions for party status filed prior to amendment of these rules, the Department must initially serve the filer by paper and request an email address for electronic filing.</p> <p>RACM - Will Dept notify those subject to the new rules in writing re: switch to electronic default?</p>	OWRD is already required to notify all of the rule change and the requirements pursuant to 0005(6). OWRD clarified that notice must be mailed. In section 85, OWRD has also clarified that this section is about methods of filing and service that occur after referral. Together, these should address the concerns.	<p>Complete. No change in v3.</p> <p>Complete. Rule changed in v2.</p>
<b>690-002-0085</b> 9/5 Draft.	RACM - “subject to this Division” is confusing and applicability of the rule to timing in the process.	OWRD will delete “subject to this Division” and clarify that the new rules apply to cases once referred, which was the intent.	Complete. Changed 10/16 draft.
<b>690-002-0090</b> 9/5 Draft.	<p>RACM - There was a lot of discussion back and forth over the ability for parties to object to a consolidation. Some RAC members suggested that parties should be able to object to consolidation. Other RAC members supported streamlining by allowing for consolidation if all parties agree consolidation is a good idea.</p> <p>RACM - We would urge the OWRD to include some process around this. Eg: parties should have a chance to object to consolidation or bifurcation and have that ruled on by the ALJ and/or agency</p> <p>OWRD/OAH – There is a typo of repeating the parties. OWRD will clarify that parties may still file a motion to consolidate or bifurcate with the ALJ if OWRD has not.</p>	<p>. The new rules do not remove the existing process in the APA and are intended to be a streamlining measure that allows a case to be referred as a consolidated case. Because HB 3544 (2025) requires hearings to be complete in 180 days, OWRD was hoping to frontload a decision on consolidation. It is more efficient to consolidate upfront.</p> <p>That said, if OWRD has not made a decision, the parties should be able to file a motion. OWRD added: .. of its decision. A party may file a motion with the administrative law judge to consolidate or bifurcate if the Department has not notified</p>	<p>Complete. Partial rule change v3.</p> <p><b>Will discuss with RAC</b></p>

		the parties of a decision prior to referral.	
<b>690-002-0095 (3)</b> 9/5 Draft.	<p>RACM - How did you get to 25-hour limit on staff time to produce documents?</p> <p>Did OWRD consider charging fees after the first 25 hours?</p> <p>RACM – Examples of potential conflicts include Proposed rule language in 0095(3), which effectively allows OWRD to convert certain requests for production into public records requests, appears to conflict with OAR 137-003-0568(9), which provides that, "[i]n addition to or in lieu of any other discovery method, a party may ask an agency for records under the Public Records Law."</p> <p>Proposed rule language in 0095(3) is also potentially in conflict with OAR 137-003-0566(3), which allows an "agency [to], by rule, limit a party's ability to obtain discovery from the agency <i>when the agency merely is providing a forum for the parties and is not an active participant in the case.</i>" (<i>Emphasis added</i>).</p> <p>RACM - Production of documents: This section is unfair. It could make public participation cost prohibitive, especially with protest fees now over \$1,000. It also raises questions as to how the OWRD will make determinations as to the time fulfilling any request would take. Overly broad document requests can be addressed by objections to discovery based on relevance, undue burden, etc.</p>	<p>OWRD RAC MTG: Some of this is a desire to move things to our public records experts, who have more familiarity and expertise with processing document requests. We also have 180 days to complete contested cases: so there needs to be some practicality built in. In many cases we won't exceed 25 hours of staff time because we are moving towards the agency producing its file upfront. The types of things that take significant time are a party saying, "I'd like to see every file the agency has every produced on this particular application type."</p> <p>OWRD does not see a conflict. It is not in the public interest or fair to other applicants/protestants for the department to utilize all of its resources on a few cases. Timely decisions require a reasonable amount of time spent on each case.</p> <p>OWRD changed to 30 hours to address some of the concerns.</p>	<p>Complete. Rule changed v3.</p> <p><b>Will discuss with RAC</b></p>
<b>690-002-0095 (4)</b> 9/5 Draft.	RACM - Examples of potential conflicts include. See comment under (3)	OWRD does not see conflicts.	Complete. No change made.
<b>690-002-0095 (4)</b> v1	Concerns about site visits expressed by RAC Members (See other comments below)	OWRD: Revised to propose a new option for discussion: A site visit requires the consent of the Department, the parties, and the administrative law judge.	Complete. Changed 10/16 draft. Note anticipate subgroup discussion.
<b>690-002-0095 (6)</b> 9/5 Draft.	RACM - Public records request should specifically reference OWRD	Revision made.	Complete. Changed 10/16 draft.



<p><b>690-002-0095</b> 9/5 Draft.</p>	<p>RACM - These draft rules do not implement HB 3544; much of what is contained herein was opposed by certain parties during the legislative session; where did this all come from? Some lobbied against these constraints during the legislative session. They were not included in HB 3544. Does not seem fair to do so now.</p> <p>RACM - Proposed rules may prejudice protestors because of truncated timelines. In other instances, limiting discovery may actually increase workloads/and slow things down because back and forth between OWRD and the requestor of documents may narrow the request.</p> <p>RACM - understand and generally support OWRD's goals here of supporting due process while also providing timely decision by moving through the contested case process efficiently. However, we have several concerns with the Department's proposed changes to OAR690-002-0095. As such, LandWatch supports the request by RACM members to give this section more discussion, potentially outside of the RACM process. In addition, we want to echo the discussion during the September 24th RACM meeting that the proposed rule changes appear to limit discovery in arbitrary ways, as well as conflict with or fail to satisfy requirements of several existing rules.</p> <p>RACM - In addition to these potential conflicts with existing rules, we want to emphasize that one of the points of referring a case to an ALJ is to allow a neutral hearing officer to manage the case and make context-sensitive judgment calls about things like the propriety of requests for discovery.</p> <p>ALJs should be left to do that job; OWRD should neither categorically predetermine the propriety of certain discovery methods (as with requests for admission) nor reserve for itself the ability to veto discovery on a case-by-case basis (as with interrogatories and site visits). The provisions of OAR 137-</p>	<p>OWRD RAC MTG: These proposed rule changes are coming from the Department. Several of the provisions in HB 3544 were removed during Session because the Department had authority to do them under existing statute and could be implemented later. As discussed, the model rules provide the Commission with authority to specify what methods of discovery apply if it makes certain findings; see OAR 137-003-0566(2). Further, the Department does not believe that this prejudices those representing the interests of the public – in fact it is the public interest that has suffered by a lack of timely contested case proceedings given that the majority of those in the backlog are for instream water rights.</p> <p>It should not be assumed that something that was in the legislation but later removed was indicative of legislative intent. Further, it's important to recognize that there are expectations that OWRD will reduce processing timelines. OWRD wants to reduce processing timelines. From our standpoint, due process also includes the timeliness of decisions. If OWRD spends all of its resources on one proceeding, the public interest is not served.</p>	<p>Complete. No change made as these were general and not specific comments. See other sections for rule changes made in response.</p>
---------------------------------------	---	--	--



	<p>003-0565 through 0595 already provide ALJs with the direction they need to limit discovery to promote efficiency. See, e.g., OAR 137-003-0567 ("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.")</p> <p>RACM - As noted in the RACM #2 meeting, WaterWatch has significant concerns with this section of the proposed rules (subsections (1) through (6)). Discovery is a big subject and should be broken out and handled separately. Discovery was not limited by HB 3544, in part, we believe, because WaterWatch raised concerns in the process about any attempt do to that. We do not support the draft's seemingly arbitrary limits on discovery. This proposed rule seems designed specifically to help the agency and applicants and to prejudice groups representing the public interest, whether conservation group, environmental justice group or citizen group. This section of the rule is very important because a party representing public interests typically needs to get relevant information from the agency and the applicant, whereas the applicant typically does not.</p> <p>RACM - Should not be limiting discovery in this rulemaking. HB 3544 deliberately didn't attempt to do that (we were in conversations on that). There isn't a good reason to deviate from APA/model rules discovery limits for water cases. Discovery is not the bottleneck in the contested case process and new default time limit for contested cases should ensure discovery is efficient. OWRD/OWRC decisions affect important public resources. Parties to disputed resources. Parties to disputed decisions should have at least as much discovery as parties to disputed decisions of other agencies.</p>		
<b>690-002-0095(1) v2</b>	RACM - Reconsider barring requests for admissions as a discovery tool.	Based on our experience, we have not seen requests for admissions	Complete. No rule change.

	RACM - We oppose prohibition on use of requests for admission. In our experience, they can be a useful way to resolve issues and, in that way, streamline the process, especially if parties are required to explain responses, etc., as under ORCP 45B, which we would push on a motion to compel in the proper case.	that actually moved the process along.	<b>Will discuss discovery - 0095 with RAC</b>
<b>690-002-0095(2) v2</b>	RACM- Reconsider number of allowed interrogatories.	Subgroup meeting held for discussion on discovery.	<b>Complete. Rule changed v2.</b>
<b>690-002-0095 (2) 9/5 Draft.</b>	<p>RACM - We oppose limiting interrogatories beyond limit in OAR 137-003-0566(1), which is 20, for the same reasons we oppose new limits on discovery generally.</p> <p>RACM - What is the justification for the 5-interrogatory limit, which is less than the model rules specify? Doesn't this undermine the ALJs judgement? Isn't this fewer than what is prescribed by the Model Rules?</p> <p>RACM - Interrogatories: The suggested limit of 5 seems arbitrary and too low. The presumptive limit in federal court is 25. Unclear where this came from.</p>	Change made in rules, increasing limit from 5 to 10.	
<b>690-002-0095(4) v2</b>	RACM - We oppose this provision (both original and revised) limiting site visits. Any party should be able to request one and the ALJ should be able to decide if there is an objection. No party should have veto power. If there is a new provision on this, it should also make clear if it refers only to site visits as part of the hearing or also to site visits on private land as part of discovery, which we should support as something a party could request, subject to objection and a ruling by the ALJ.	OWRD has considered this comment but does not propose a change to the rule draft. Site visits are time consuming both from a scheduling standpoint and for attendance; they also increase expenses for travel; and they increase the likelihood of exceeding 180 days.	
<b>690-002-0095(5) v2</b>	RACM - We do not understand the rationale for these proposed additions or the proposed timing requirements. If the subpoenas for purposes of document discovery, they should be subject to the general discovery schedule. Otherwise, subpoenas should be governed by the existing model rules. We do not see a need for changes.	A rule change is required to ensure compliance with the 180-day timeline because there is no current deadline for issuing subpoenas for the production of documents. OWRD agrees with the suggested change requiring the deadline to be the same as the	<b>Complete. Change made in v3.</b>

<b>690-002-0095</b> (5) 9/5 Draft.	RACM - Subpoenas: This seems random and arbitrary, especially the level of detail on this one subject, which seems to be coming from one party's grievances instead of a thoughtful discussion. These provisions also may be inconsistent with ORS 183.400, which they cannot be unless the legislature said so, which it has not.	deadline for filing a motion to compel.	
<b>690-002-0095(6) v2</b>	RACM - We do not understand the rationale for this proposed rule or why it would be limited to requests just to the Department. Also, the proposed rule implies that a public records request made before the specified times would be a basis for an extension of the hearing. We do not believe there is a need for a rule on this. Any request for an extension of a hearing should be subject to general requirements to show good cause, which would include consideration of whether a public records request asserted as the basis for the extension was made in a timely fashion.	Initial discovery requests can be done upfront even before referral. The goal here is to push work to be done timely so as not to delay in a way that pushes beyond the 180 days set in statute. As a reminder, there is an expectation that OWRD conducts more timely contested cases and eliminates the backlog. The deadline was set in a way that allowed time for a party to make a public records request after learning the outcome of a request for the production of documents, while still ensuring that the 180-day timeline can be met	Complete. No rule change.
<b>690-002-0095</b> (6) 9/5 Draft.	RACM - Public record request/extension: This seems random and ill-conceived, and appeals to be addressing an undisclosed party's grievance, which is not a good basis for a generally applicable rule. Discovery in contested cases was not addressed in the bills and needs to be a more thoughtful discussion than this rulemaking is allowing. Also, this issue should not be addressed in this cookie-cutter way. Different cases require different treatments. Justification for an extension will depend on the particulars.  RACM - What is the justification for the 2 weeks deadline on public records request w/ respect to the motion to compel?  RACM - Does OWRD have authority to limit ALJ's discretion?		
<b>690-002-0175</b> (1) 9/5 Draft.	RACM - "Administrative Law Judge" should not be capitalized; it's not capitalized anywhere else and is not a defined term	Revision made.	Complete. Changed 10/16 draft.
<b>690-002-0190</b> 9/5 Draft.	RACM - Rather than leaving filing method to what it says in the final order, which is sometimes ambiguous (e.g., "with the Department"), we suggest saying exceptions	Change made.	Complete. Change made v3.

	(to final order and proposed orders) “may be filed with the Department in person, by mail such that they arrive by the deadline, and/or by electronic mail or other electronic means provided by the Department.		
<b>690-002-0205 9/5 Draft.</b>	RACM - recommends OWRD provides a party with an opportunity to submit a reply brief in support of a motion for summary judgment.	OWRD has considered the comment but declines to make a change to the draft rules. This would seem to add a third round of briefing and would make it more difficult to stay within the 180 days.	Complete. No change made.  <b>Will discuss - 0205 with RAC</b>
<b>690-002-0205 9/5 Draft.</b>	RACM - Move away from “cookie cutter” approach and defer to OAH  RACM - WaterWatch has significant concerns with the cookie-cutter approach of these rules. Deadlines should be set in each case by conferral and prehearing conference. Cases may require more or less time for certain things. (e.g. This schedule seems built around motions for summary determination, which, although some counsel seem to love to file them, often add considerable unnecessary time and expense to the process). We appreciate that HB 3544 calls for a default scheduling including discovery requests and responses and motions to compel. We suggest leaving it at those and allowing other deadlines to be set in prehearing conferences. For example, the parties may agree that the issues cannot be resolved on motions for summary determination, or that all of them can, which would change the need to set deadlines for those motions	POST RAC MTG: HB 3544 requires a default hearing schedule, so the new rules need to contain one. The desire here is to provide more timely decisions. If the case is not suitable for the default schedule there is discretion provided per the statute. A change was also made to allow some modification upon agreement of the parties as discussed in other comments above.  OWRD agrees that motions for summary determination add length and expense. OWRD does not have authority to eliminate motions for summary determination without a waiver of the model rules by the AG or legislation.	Complete. See changes made -0205.
<b>690-002-0205 v1</b>	OWRD/OAH – Agencies were in the middle of conferring on this issue and had sent out a placeholder with a note that it would be updated after consulting.	Revised default schedule after consult with OAH. This does not yet reflect input and discussion with RAC, as a subgroup is scheduled to discuss.	Complete. Changed 10/16 draft.
<b>690-002-0205 v2 (first 4 in bullet list)</b>	RACM - We do not see the need to create an "issue list," especially given the stated desire to increase efficiency and reduce the time and expense necessary to complete a contested case. The protests and/or petitions for party status can define the issues, just as the complaint does in a civil court case. While a summary of the issues raised may be helpful, it does not seem to	HB 3544 requires issues be raised with sufficient specificity. In some instances, OWRD may determine that issues included in protests are not raised with sufficient specificity and may not include them in at the time of referral. If a party objects to this determination, the objection	Complete. No rule change.

	us worth the time and energy (and therefore the expense) it may take to create one, especially since the parties may disagree about how to fairly describe and/or summarize the issues raised, which then requires preparation of several written filings. To the extent a party feels a protest raises issue that should not be considered in the contested case, that can (and should) be handled by motion, which we hope will generally not be necessary.	should be briefed at the beginning of the case. In most cases, the “issues list” will likely simply refer to the protest, in which case there should be no need for briefing. As with other deadlines in the default schedule, if issue briefing deadlines are not needed, the schedule can be adjusted.	
690-002-0205 v2	<p>Move up discovery request timeline.</p> <p>Allow 30 days for response to discovery request</p> <p>Allow 30 days between response to discovery and motion to compel discovery</p> <p>Remove proposed issue list and objections to proposed issue list from schedule</p> <p>Add goals regarding proposed issue list</p>	OWRD has modified the schedule to move up the discovery request deadline, allowing 30 days for responses to discovery requests and 14 days between filing of responses and motions to compel.	Complete. Rule changed in v3.
690-002-0205 v2	RACM - Suggest adding at the end something to the effect of: "These deadlines may be altered, and additional deadlines may be added, by agreement of the parties and the administrative law judge, or by decision of the administrative law judge upon a motion or request of a party, provided the hearing is completed within 180 days of referral if not extended pursuant to Or. Laws, Chapter 575 (2025), section 2 (5)." (Would be good to replace all these Or. Law references with ORS references ASAP.)	<p>It makes sense to be clear that there should be some mechanism for altering the schedule if certain dates are not needed and more time can be given to other events, or the schedule can be shortened. Added language in the rule, allowing for alterations by consent of the parties, OWRD, and the ALJ. Otherwise, hearing extensions are governed by the factors in HB 3544.</p> <p>RE the Oregon Law citations vs ORS citations. The ORS citations have not been published yet, so the OR Law references are the current standard.</p>	Complete. Rule changed in v3.
690-002-0205 v2 (bullets 5 – 8 in list)	RACM - This default schedule leaves too little time to respond to discovery requests and to file motions to compel, which require time to review the discovery provided (often including numerous documents) and to confer with opposing counsel. Our suggestion is to require discovery requests earlier in the process (say within 10 days of referral), especially since our understanding	Changes made as described above. While OWRD agrees that motions for summary determination are sometimes counterproductive, summary determination deadlines are routinely included in hearing schedules because parties often have not committed to either filing	Complete. See adjustments made to -0205.

	<p>is that parties will be getting more advance notice of the referral. The default schedule could then allow 30 days to respond to discovery requests and 30 days to file motions to compel. A decision on motions to compel would then be due on day 70, still leaving 110 days to complete the hearing. We also question the need to set a default schedule for dispositive motions, which would tend to encourage them when, in our view, it is usually more efficient, and less likely to lead to a reversal that further complicates resolution, to simply let everything go to hearing and let the ALJ issue the proposed order based on that, including any issues that can be resolved as a matter of law. A better approach to dispositive motions would be to let the parties confer regarding whether the case lends itself to dispositive motions (perhaps when no material facts are in dispute) and set a schedule for that if necessary. To the extent the default schedule does include deadlines for dispositive motions, there needs to be more time between a decision on motions to compel and dispositive motions because it will take time for the compelled party to produce the discovery and for other parties to review it for possible inclusion in dispositive motions.</p>	<p>or not filing at the time the schedule is set. If dates are not set, the likelihood of a schedule extension increases. If the parties and OWRD are willing to commit not to file MSDs at the initial prehearing conference in a given case, the default schedule can be adjusted and the time applied to other deadlines or the hearing schedule shortened. See rule changes in -0205 and discussed elsewhere.</p>	
<b>690-002-0205 v2 (last bullet in list)</b>	<p>RACM - The "10-14 day window" reference is confusing. Does it assume no hearing will be more than four days? Should try to build in more time for the occasional longer hearing and maybe leave out the description of the "window" from exhibits to hearing start (because it will depend on the length of the hearing). Probably also makes sense to move up (make earlier) the deadline for exchange of exhibit and witness lists so there is more time for hearing, which should be possible if you cut out the process for an "issue list" and don't prescribe here the deadlines for MSDs.</p>	<p>Changes made based on comment. The "window" references are purely for the convenience of the RAC members and will be removed in the final version of the rules.</p>	<p>Complete. Changed in v3.</p>
<b>690-002-0210 v1</b>	<p>OWRD/OAH had noted confusion over language and whether it was about the means of testimony or that oral testimony was to be given greater weight.</p>	<p>OWRD revised to attempt to address to make clear that the preference is about the means of providing testimony not that it shall be given greater consideration.</p>	<p>Complete Changed 10.16 draft.</p>

<b>690-002-0210 v2</b>	RACM - Still awkwardly worded. Suggest as in rule summary: "give preference for testimony to be provided orally rather than in writing, without requiring testimony in writing."	Change made.	Complete. Changed in v3.
<b>690-002-0220</b> (3) 9/5 Draft.	Need to renumber to (4)	Revision made.	Complete. Changed 10/16 draft.
<b>690-002-0225</b> (6)-(11) 9/5 Draft.	Need to renumber	Revision made.	Complete. Changed 10/16 draft.
OAR 690-002-0225	OWRD staff: should say "this rule" instead of "these rules" for clarity purposes	updated	Complete. Rule change in v3.