

R183: Solar Photovoltaic Rulemaking Project, RAC Meeting #5
Attachment 2: OAR 137-002, Model Rules for Agency Declaratory Rulings

137-002-0010 - Petition for Declaratory Ruling

The petition to initiate proceedings for declaratory rulings shall contain:

- (1) The rule or statute that may apply to the person, property, or state of facts;
- (2) A detailed statement of the relevant facts; including sufficient facts to show petitioner's interest;
- (3) All propositions of law or contentions asserted by petitioner;
- (4) The questions presented;
- (5) The specific relief requested; and
- (6) The name and address of petitioner and of any other person known by petitioner to be interested in the requested declaratory ruling.

137-002-0020 - Service of Declaratory Ruling Petition

- (1) The petition shall be deemed filed when received by the agency.
- (2) Within 60 days after the petition is filed the agency shall notify the petitioner in writing whether it will issue a ruling. If the agency decides to issue a ruling, it shall serve all persons named in the petition by mailing:
 - (a) A copy of the petition together with a copy of the agency's rules of practice; and
 - (b) Notice of any proceeding including the hearing at which the petition will be considered. (See OAR 137-002-0030 for contents of notice.)
- (3) Notwithstanding section (2) of this rule, the agency may decide at any time that it will not issue a declaratory ruling in any specific instance. The agency shall notify the petitioner in writing when the agency decides not to issue a declaratory ruling.

137-002-0025 - Intervention in Declaratory Rulings

- (1) Any person or entity may petition the agency for permission to participate in the proceeding as a party.
- (2) The petition for intervention shall be in writing and shall contain:
 - (a) The rule or statute that may apply to the person, property, or state of facts;
 - (b) A statement of facts sufficient to show the intervenor's interest;

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(c) A statement that the intervenor accepts the petitioner's statement of facts for purposes of the declaratory ruling;

(d) All propositions of law or contentions asserted by the intervenor;

(e) A statement that the intervenor accepts the petitioner's statement of the questions presented or a statement of the questions presented by the intervenor;

(f) A statement of the specific relief requested.

(3) The agency may, in its discretion, invite any person or entity to file a petition for intervention.

(4) The agency, in its discretion, may grant or deny any petition for intervention. If a petition for intervention is granted, the status of the intervenor(s) shall be the same as that of an original petitioner, i.e. the declaratory ruling, if any, issued by the agency shall be binding between the intervenor and the agency on the facts stated in the petition, subject to review as provided in ORS 183.410

(5) The decision to grant or deny a petition for intervention shall be in writing and shall be served on all parties.

137-002-0030 - Notice of Declaratory Ruling Hearing

The notice of hearing for a declaratory ruling shall:

(1) Be accompanied by a copy of the petition requesting the declaratory ruling and by a copy of any petition for intervention if copies of these petitions have not previously been served on the party;

(2) Set forth the time and place of the proceeding; and

(3) Identify the presiding officer.

Statutory/Other Authority: ORS 183.410

Statutes/Other Implemented: ORS 183.410

137-002-0040 - Declaratory Ruling Procedure

(1) The proceeding shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency, a member of its governing body or any other person designated by the agency.

(2) No testimony or other evidence shall be accepted at the hearing. The petition will be decided on the facts stated in the petition, except that the presiding officer may agree to accept, for consideration by the agency, a statement of alternative facts if such a statement has been stipulated to in writing by all parties to the proceeding, including any intervening parties.

(3) The parties and agency staff shall have the right to present oral argument. The presiding officer may impose reasonable time limits on the time allowed for oral argument. The parties and agency staff may

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file briefs in support of their respective positions. The presiding officer shall fix the time and order of filing briefs and may direct that the briefs be submitted prior to oral argument. The presiding officer may permit the filing of memoranda following the hearing.

(4) The proceeding may be conducted in person or by telephone.

(5) As used in this rule, "telephone" means any two-way electronic communication device.

137-002-0050 - Presiding Officer's Proposed Declaratory Ruling

(1) Except when the presiding officer is the decision maker, the presiding officer shall prepare a proposed declaratory ruling in accordance with OAR 137-002-0060 for consideration by the decision maker.

(2) When a proposed declaratory ruling is considered by the decision maker, the parties and agency staff shall have the right to present oral argument to the decision maker.

137-002-0060 - Issuance of Declaratory Ruling

(1) The agency shall issue its declaratory ruling within 60 days of the close of the record.

(2) The ruling shall be in writing and shall include:

(a) The facts upon which the ruling is based;

(b) The statute or rule in issue;

(c) The agency's conclusion as to the applicability of the statute or rule to those facts;

(d) The agency's conclusion as to the legal effect or result of applying the statute or rule to those facts;

(e) The reasons relied upon by the agency to support its conclusions;

(f) A statement that under ORS 183.480 the parties may obtain judicial review by filing a petition with the Court of Appeals within 60 days from the date the declaratory ruling is served.

(3) The ruling shall be served by mailing a copy to the parties.