

Comparing Contested Case Model Rules with OAH Rules

Topic	Council Rules	Model Rules	OAH Rules	Summary of differences between model and OAH Rules
Contested Case Notices	345-015-0014	137-003-0001	137-003-0505	No significant differences between Model and OAH Rule. The Council rule does not conflict with OAH Rule, but directly references Model Rule.
Referral to OAH/ Appointment of Hearing Officer	345-015-0220	No Comparable Rules	137-003-0515	<p>The OAH Rules contemplate that a contested case will be referred to OAH at the commencement of the contested case proceeding.</p> <p>Under the Council rules, a Hearing Officer is appointed before this point to conduct the Public Hearings on the DPO, and delegates certain agency actions, such as making rulings on petitions for party status and hearing requests to the Hearing Officer.</p> <p>OAH Rules allow the agency to delegate authority to the hearing officer, so this is not a conflict, but some clarification may be needed if the OAH Rules were adopted for use by the Council.</p>
Rights of Parties		137-003-0002	137-003-0510; 137-003-0505(1)(h); 137-003-0550;	<p>The rights of parties in contested cases are substantively the same under both the Model Rules and the OAH Rules.</p> <p>While the statement that a party that is not a natural person is required to be represented by an attorney is not required under the Model Rules, the requirement is provided in OAH Rules OAR 137-003-0505(1)(h) and 137-003-0550.</p>
Filing and	345-015-0012	No	137-003-0520	The OAH Rule describes filing and service requirements

Topic	Council Rules	Model Rules	OAH Rules	Summary of differences between model and OAH Rules
Service of Documents		Comparable Rules		<p>for documents that are not included in the Council rule, but since the Council rule delegates authority to specify the means and requirements for filing to the Hearing Officer there does not appear to be a conflict.</p> <p>The Council rule includes a specific provision for motions to amend the service list to remove limited parties who are no longer participating in the contested case. While this is not included in the OAH Rule, this procedure could potentially be contemplated under OAH Rule OAR 137-003-0630.</p>
Date of Receipt		No Comparable Rules	137-003-0520(9)	<p>For documents that are mailed, the OAH Rules rely on the postmark date to establish the date of filing. While the Council rules delegate the establishment of filing requirements for the contested case proceeding to the Hearing Officer, the Council often rely on the date of receipt to allow the Council to make timely decisions during Council meetings.</p> <p>For hearing requests, the OAH Rules allow agencies to adopt rules exempting themselves from the postmark rule based on operational conflicts. If the OAH Rules were adopted, the Council could adopt such a rule, or could consider requesting an exemption from the requirement from the Attorney General.</p>
Late Filings / Late Hearing Request	No Applicable Rules	137-003-0003	137-003-0528 137-003-0530 See also 137-003-0501(7)	Under OAH Rules, the decision to allow a late request is based on whether the requestor showed “good cause” – defined in OAR 137-003-0501(7) as existing when the late filing arose from “an excusable mistake, surprise, excusable neglect, reasonable reliance on the statement of a party or agency relating to procedural

Topic	Council Rules	Model Rules	OAH Rules	Summary of differences between model and OAH Rules
				<p>requirements, or from fraud, misrepresentation, or other misconduct of a party or agency participating in the proceeding.”</p> <p>This standard is broader than the standards used in the Model Rules which generally only allow a late filing to be considered if the delay was outside of the reasonable control of the filing party. See 137-003-0003(2)(a).</p> <p>Provisions for service of late hearing requests and the option to require an affidavit or other written explanation are the same in the Model and OAH Rules.</p> <p>The Model Rules allow the agency to choose whether other parties will have the opportunity to respond to a late hearing request. OAH Rules require that other parties be given a chance to respond.</p> <p>The OAH Rules contain additional procedures for resolving disputes related to decision to allow or deny a late hearing request.</p>
Limited Parties	345-015-0016	137-003-0005	137-003-0535	<p>The OAH Rule specifically includes language allowing an agency to differentiate between parties and limited parties by rule.</p> <p>Both the Model Rules and OAH Rules set 21 days before the hearing date as the default deadline for a petition for party status. The OAH Rules specifically authorize an agency to adopt rules setting a different deadline, which the Council has done under OAR 345-015-0016(1).</p>
Authorized	345-015-0018	137-003-0008	137-003-0555	Both the Model Rules and the OAH Rules allow agencies

Topic	Council Rules	Model Rules	OAH Rules	Summary of differences between model and OAH Rules
Representatives				to allow use of authorized representatives by rule. The Council has adopted such a rule under OAR 345-015-0018.
Indigent Status	345-015-0022	No Comparable Rules	No Comparable Rules	The Council's rules allow a party or limited party to submit a petition for indigent status. There is no similar provision in either the Model Rules or the OAH Rules, and it is not clear if this procedure would be allowed if the Council chose to have its contested cases conducted under the OAH Rules.
Collaborative Dispute Resolution	345-001-0005	137-003-0015	137-003-0565	<p>The procedures for use of collaborative dispute resolution in the Model Rules and the OAH Rules are generally the same.</p> <p>While the Council rules do not specifically mention collaborative dispute resolution processes, the Council has adopted the Attorney General's Model Rules for Collaborative Dispute Resolution under OAR 345-001-0005.</p>
Discovery	345-015-0023(5)	137-003-0025	137-003-0566 137-003-0567 137-003-0568 137-003-0569 137-003-0572 137-003-0567	<p>The Council's Rules delegate control over discovery to the Hearing Officer under OAR 345-015-0023(5), which specifically references the Model Rule.</p> <p>While the procedures for discovery provided in the OAH Rules are more robust than in the Model Rules, the standards and methods allowed and requirements for discovery requests are generally the same.</p> <p>The OAH Rules provide a maximum number of requests for admission and interrogatories that can be submitted without authorization from the ALJ. The Model Rules</p>

Topic	Council Rules	Model Rules	OAH Rules	Summary of differences between model and OAH Rules
				<p>don't establish any such caps.</p> <p>The methods listed in the OAH Rule are currently allowed in Council proceedings, but if the Council found that one or more methods was inappropriate, the OAH Rules allow an agency to adopt rules limiting discovery methods.</p> <p>The OAH Rules provide an opportunity for a party to request the Chief ALJ to review a discovery order. This is unique to OAH proceedings.</p> <p>The Model Rules and OAH Rules for enforcement of a discovery order contain similar provisions, although the OAH Rules provide additional detail on what occurs if a party fails to respond to a request for admission.</p>
Pre-hearing Conference	345-015-0083	137-003-0035	137-003-0575	<p>Prehearing Conferences are optional under all three sets of rules, although ORS 469.370(4) does imply that the prehearing conference is a mandatory step in a contested case proceeding on an Application for Site Certificate. The procedures are generally the same, although OAH Rules expand on the procedures for the conduct of prehearing conferences to include a prehearing conference notice and requirements for participation.</p> <p>The Council rule states that failure to raise an issue in the prehearing conference in a contested case on an application is a waiver of that issue. It is not clear whether the rule is meant to require persons to reiterate the issues raised in their petition for party status, or if the rule is meant to apply only to procedural</p>

Topic	Council Rules	Model Rules	OAH Rules	Summary of differences between model and OAH Rules
				<p>issues related to the conduct of the contested case. The OAH Rule provides a different standard, stating that failure to appear at the prehearing conference does not preclude judgement on issues already identified by the hearing officer.</p>
Motion for Summary Determination		No Comparable Rules	137-003-0580	<p>A motion for summary determination is a motion requesting a ruling in favor of the agency or moving party on any or all legal issues in the contested case.</p> <p>Neither the Council nor Model Rules contain a specific provision for Summary Judgement, although Hearing Officers have allowed use of the procedure in Council contested case proceedings, relying on Council's rule addressing motions (OAR 345-015-0054).</p>
Subpoenas		137-003-0025	137-003-0585	<p>Subpoenas are allowed under the Model Rules and OAH Rules, but specific procedures are not provided in the former.</p> <p>The Model Rule states that the agency may apply to circuit court to compel obedience to a subpoena, while the OAH Rule states the agency or the party requesting the discovery may apply to the circuit court to compel obedience to a subpoena.</p> <p>The OAH Rules allow a party to file a motion to quash a subpoena. There is no specific provision for such a procedure under the Model Rules.</p>
Conduct of Hearing	345-015-0023	137-003-0040	137-003-0600	<p>The procedures for the conduct of the hearing, the maintenance of the record, and the questioning of witnesses are largely the same in the Model Rules and the OAH Rules. The Council's rules require the Hearing</p>

Topic	Council Rules	Model Rules	OAH Rules	Summary of differences between model and OAH Rules
				<p>Officer to provide updates to the Council on the status of the case, and while there does not appear to be a similar provision in the OAH Rules, this is not a direct conflict.</p> <p>The Council has delegated several responsibilities to the Hearing Officer. While most of these responsibilities would be carried out by the ALJ under the OAH Rules, some responsibilities may be expected to be performed by the Agency, as noted throughout this document.</p> <p>While the OAH Rules allow delegation of most agency responsibilities, it may be appropriate to revise Council's delegated list if the Council chooses to have the OAH Rules apply to its proceedings.</p>
Interlocutory Appeal	345-015-0057	No Comparable Rules	No Comparable Rules	<p>The Model Rules and OAH Rules don't address interlocutory appeals. If Council were to adopt the OAH Rules and wanted to maintain this or another interlocutory appeal rule, it would be necessary to obtain authorization from the Attorney General (per OAR 137-003-0501(2)).</p>