Presiding Officer’s

Text for Conducting a Rulemaking Hearing

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| **OAR 137-001-0030**  **Conduct of Rulemaking Hearings**  (1) The hearing to consider a rule 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) At the beginning of the hearing, any person wishing to be heard shall provide their name, address, and affiliation to the presiding officer. The presiding officer may also require that the person complete a form showing any other information the presiding officer deems appropriate. Additional persons may be heard at the discretion of the presiding officer.  (3) At the beginning of the hearing, the presiding officer must summarize, to the extent requested by any participant, the content of the notice given under ORS 183.335.  (4) Subject to the discretion of the presiding officer, the order of the presentation shall be:  (a) Statements of proponents;  (b) Statements of opponents; and  (c) Statements of other witnesses present and wishing to be heard.  (5) The presiding officer or any member of the agency may question any witness making a statement at the hearing. The presiding officer may permit other persons to question witnesses.  (6) There shall be no additional statement given by any witness unless requested or permitted by the presiding officer.  (7) The hearing may be continued with recesses as determined by the presiding officer until all listed witnesses have had an opportunity to testify.  (8) The presiding officer shall, when practicable, receive all physical and documentary evidence presented by witnesses. Exhibits shall be marked and shall identify the witness offering the exhibit. Any written exhibits shall be preserved by the agency pursuant to any applicable retention schedule for public records under ORS 192.001 et seq.  (9) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.  (10) The presiding officer shall make a record of the proceeding, by audio or video tape recording, stenographic reporting or minutes.  Stat. Auth.: ORS 183.341 & 183.390 |

**Important Meeting Tips**

* Reserve a meeting room and a teleconference phone number several months in advance
* If your hearing is at DEQ headquarters and begins after 5 pm,
  + Building security must be notified and we must pay a fee for after-hours HVAC operation
  + This is done by notifying DEQ Health and Safety
  + You may have to post a person in the lobby to let people in and out of the building
  + You may have to post a person in the lobby to get people into the elevator if the meeting is not on the 6th floor
  + You can find procedures for conference room use and operations [HERE](file://deqhq1/Rule_Resources/Linked%20Files/lloyd%20building/Lloyd%20Building%20Conference%20Room%20Use%20V2_5-9-18.pdf)
* Two weeks before your hearing, review [HEARING](http://deqsps/programs/rulemaking/SitePages/Hearings.aspx), and [TELECONFERENCE/RECORDING](http://deqsps/programs/rulemaking/SitePages/Rulemaking%20teleconferencing%20information.aspx) procedures on SharePoint
* The administrative rule about hearing procedures states a “Presiding Officer” will run the hearing. The statute the rule is based on does not use that term. It is also not defined anywhere. There is no information anywhere that states what qualifications there are, if any, to be a presiding officer. OAR 137-001-00030 specifically describes the presiding officer’s duties. Depending on the complexity and level of controversy of the rulemaking, from one to three people can serve the role of presiding officer, lead rule writer, and technical staff. The presiding officer:
  + Conducts and controls the hearing
  + At the beginning of the hearing, summarizes the information in the rulemaking notice
  + Determines the order of testimony of any witnesses
  + Receives any evidence witnesses present
  + Identifies and preserves and exhibits presented
  + May limit the length of any witness’s testimony
  + Must make a record of the hearing by making an audio recording, or taking notes, or creating minutes
* The hearing can take several formats, depending on the need of the rulemaking. You must explain at the beginning of the hearing what the format will be and make clear when you are beginning the formal part of the hearing where you accept formal testimony from witnesses. You can:
  + Have just the formal hearing, where you accept formal testimony from witnesses
  + Have an informational presentation first, then take formal testimony
  + Have a question and answer session, then take formal testimony
  + Or any combination of these options

**SCRIPT - Introduction**

* Start conference call

Introductions

*My name is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and I will be serving as the department’s presiding officer. The purpose of this hearing is to take public comment on the proposed action to adopt/amend/repeal PROPOSED RULES by DEQ, concerning subject matter of the rules. DEQ proposes rule amendments but it is the Environmental Quality Commission that formally adopts the rules.*

Other presenters - names and titles

Logistics Sign-up sheet

* Every person who attends the meeting must sign in on the sign in sheet
* Everyone who testifies must identify themselves and who they represent on the witness/testimony sign-in sheet. For anyone testifying, or presenting comments by phone, they must identify themselves and the hearing officer should sign that person in on the sign in sheet
* Those not wishing to make oral comments may submit hand written comments by completing the Comment Card.

Describe:

* Location of restrooms
* No smoking
* Printed information about the rules available location in room.
* All cell phones should be muted
* Locations of emergency exits
* Where in the room DEQ’s mailing address, and the URL’s for the rulemaking web page and the comment web page, are posted

**SCRIPT – Hearing Format (skip if not holding information or question & answer section)**

(Choose the option that applies to your hearing.)

*We will conduct today’s hearing in several sections. We will:*

* *First make an informational presentation*
* *Then hold a question and answer period*
* *Finally, start the formal portion of the hearing where we will hear testimony from anyone who wants to make a statement*

**SCRIPT – Information session - Optional**

**OPTIONAL QUESTION PERIOD**:

*Welcome to the Information Session portion of this meeting.*

*Before we begin the formal public hearing, we will have an informal question and answer session for the proposed rules. This is your chance to ask agency staff questions about the proposal. We will not answer questions during the hearing. The staff present are \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. They will briefly explain the rules and will try to answer any questions.*

**SCRIPT – Hearing – Where nobody will present a statement**

Even if nobody shows up for the hearing, or if people show up but nobody wants to make a formal statement or comment (what is considered “testimony), we still have to make a record so we can prove we did hold a hearing. We are required to hold a hearing and also required to record the hearing. So, where nobody wants to make a statement or comment, we need to record the following script.

* Start conference call recording

*At this time, I am starting the formal hearing. We are recording the hearing to maintain a permanent record. Today is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the time is \_\_\_\_\_\_\_\_\_\_\_\_\_\_ a.m./p.m., and we are at LOCATION. My name is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. With me are \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with DEQ’s \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Program. I am the presiding officer for this hearing and I am taking comments on behalf of the Environmental Quality Commission.*

*The purpose of this meeting is to take public comments on the proposed rules for the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* ***Rulemaking*** *rule adoption.*

*At this point, no witnesses have signed up to comment. We will turn off the recording. If anyone arrives to comment within the next half hour, we will re-start the recording. Otherwise, we will end the hearing.*

* Pause the recording
* Wait thirty minutes

*It is now TIME. No one attended the hearing and no one provided comments. I am ending the hearing.*

* Stop the recording
* End the conference call

**SCRIPT – Hearing- Where people will present a statement**

* Start the conference call

*We are almost ready to begin the rulemaking hearing. Here is some information about the hearing and how we will proceed.*

*We have a web page with information about this rulemaking. We post all documents about the rulemaking on this page. We posted the web address for that page here in the room. Also, if you want to receive email notices about this rulemaking, you can sign up for those notices on this same web page. We are trying to reduce paper usage and encourage people to use DEQ’s online comment web page for submitting comments and the DEQ website for reviewing documents.*

*We created a document called the Notice of Rulemaking. That document contains information about the proposed rule changes, why we are making them, and what we think the effects will be. We posted the notice on this rulemaking’s web page.*

*Those participating on the phone who would like to provide testimony today, please let us know and provide your name, affiliation, and email address when commenting. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the presiding officer) will sign up on the sign in sheet for anyone who testifies by phone.*

*I will begin the hearing in about five minutes, giving you an opportunity to fill out your registration cards. Are there any questions about how we will conduct the hearing?*

BEGIN HEARING

* Start recording
* Wait a few minutes, then begin.

*At this time, I am starting the formal hearing. We are recording the hearing to maintain a permanent record. Today is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the time is \_\_\_\_\_\_\_\_\_\_\_\_\_\_ a.m./p.m., and we are at LOCATION. My name is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. With me are \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with DEQ’s \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Program. I am the presiding officer for this hearing and I am taking comments on behalf of the Environmental Quality Commission.*

*If you haven’t done so, those wishing to provide testimony must sign in on the sign in sheet or if on the phone indicate that you would like to testify.*

*The purpose of this meeting is to take public comments on the proposed rules for the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* ***Rulemaking*** *rule adoption. The presiding officer’s job is to hear and acknowledge comments and not to defend the proposed rules. After the hearing, we will prepare a summary of comments. We will also write DEQ’s responses to those comments. DEQ will include the summary and the agency’s responses in the staff report the agency submits to the EQC when EQC considers whether to adopt these proposed rules. DEQ will post that staff report with EQC’s meeting agenda online several weeks before the EQC meeting.*

*There are several ways to submit comments on the proposed rules. A person can testify here today at the hearing, submit comments through our web page or mail written comments to the address we have posted (DEQ, 700 NE Multnomah Street, Room 600, Portland, OR 97232; Attention: Rule Writer). The web page address to submit comments is posted in here in the room* (explain where). *All comments must be submitted by 4 p.m. on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (date comment period closes). DEQ will not consider comments submitted after that.*

*After reviewing the comments, the Department may revise the proposed rules. The department will present its recommendations for the proposed rules at the EQC meeting scheduled for DATE at LOCATION. The Commission will use its own discretion in deciding whether to adopt all, part or none of the proposed rules. The EQC may also postpone adoption or hold additional public hearings.*

*I will now present a brief summary and explanation of the contents of the Rulemaking Notice and of the proposed rule changes . . . . . . . .*

*I would like to begin taking comments. If anyone has prepared a written statement or other documents, it would help to summarize them orally and then introduce written material into the record. DEQ gives written comments the same weight as oral comments.*

AT END

*Thank you for coming and providing us with your comments. The hearing is adjourned.*

* Stop recording
* End teleconference

**AFTER THE HEARING:**

Scan the sign in sheet, and any written comment cards into electronic form. Email the file to the Rule Group Leader or Agency Rules Coordinator.