Chapter 183

1969 REPLACEMENT PART

Administrative Procedures and Rules of State Agencies

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183.010 Definitions for ORS 183.010 to 183.050. As used in ORS 183.010 to 183.050:

(1) "Order" means any executive order or general order, regulation or rule issued, prescribed or promulgated by a state agency.

(2) "State agency" means the Governor or any executive department, independent board, establishment, bureau, agency, institution, commission or separate office of the administrative branch of the government of the State of Oregon, but does not include the legislative or judicial branches of the government.

183.020 Duplicate original of order to be filed; availability for public inspection. A duplicate original of every order shall be filed with the Secretary of State. The Secretary of State shall cause to be noted on the duplicate original order so filed the day and hour of the filing. Upon filing, the duplicate original order immediately shall be and, except as provided in ORS 183.040, remain available for public inspection in the office of the Secretary of State.

183.030 Invalidity of order until duplicate original filed. No order of which a duplicate original is, or of which an authenticated copy heretofore was, required to be filed shall be valid against a person who has not had actual knowledge of the order until a duplicate original of the order is filed with the Secretary of State as prescribed in ORS 183.010 to 183.050.

183.040 Procedure when order has been annulled. (1) When an order is vacated, rescinded or otherwise annulled by a state agency, the agency shall forthwith certify that fact to the Secretary of State.

(2) Promptly upon receipt of the certification and request, the Secretary of State shall file it and designate upon the authenticated copy or duplicate original order that the order has been annulled.

183.050 Copies of orders; fees. (1) The Secretary of State shall, upon request, supply copies of orders or designated parts of orders, making and collecting therefor the fees prescribed by ORS 177.130.

(2) All receipts from the sale of copies shall be deposited in the State Treasury to the credit of the General Fund.

183.060 [1957 c.147 §1; repealed by 1969 c.292 §3]

183.310 Definitions for ORS 183.310 to 183.510; agencies not within definition of "agency." As used in ORS 183.310 to 183.510:

(1) "Agency" means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to adjudicate contested cases, except those in the legislative and judicial branches, and except the State Board of Parole and Probation, Public Utility Commissioner, Department of Revenue, Executive Department, other than the Personnel Division, Department of General Services, Motor Vehicles Division of the Department of Transportation, State Accident Insurance Fund and Workmen's Compensation Board.

(2) "Contested case" means a proceeding before an agency in which the individual legal rights, duties or privileges of specific parties are required by statute or constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard and shall include in all cases proceedings for the suspension or revocation of or refusal to renew licenses required to pursue any commercial activity, trade, occupation or profession where the licensee demands such hearing.

(3) "Rule" means any agency order, directive or regulation:

(a) The violation of which subjects the person violating the same to imposition of a penalty.

(b) Establishing, altering or revoking any procedure, practice or requirement relating to agency hearings at which specific parties are entitled to appear and be heard.

(c) Establishing, altering or revoking any qualification or requirement relating to benefits or privileges to which applicants are entitled by law, or to the issuance, suspension or revocation of licenses to pursue any commercial activity, trade or profession.

(d) Establishing, altering or revoking any mandatory standard for any product or material when it is required by law that such standards must be met before the affected product or material may be offered for sale. [1957 c.717 §1, 1965 c.285 §78a, 1967 c.419 §32; 1969 c.80 §37a]

183.320 ORS 183.310 to 183.510 not applicable to certain agencies. The provisions of ORS 183.310 to 183.510 shall not apply to any agency of this state whose law or administrative practices and procedures adopted pursuant thereto are required to conform to any provision of the federal law or rules and regulations as a condition to the receipt of federal granted funds or are adopted to conform with requirements for

tax credit to employers in the state under any federal law.
[1957 c.717 §15]

183.330 Adoption of rules. In addition to other rule-making requirements imposed by law:

(1) Each agency shall adopt rules governing the formal and informal procedures prescribed or authorized by ORS 183.310 to 183.510. Such rules shall include rules of practice before the agency, together with forms or instructions.

(2) To assist interested persons dealing with it, each agency shall, as far as deemed practicable, supplement its rules with descriptive statements of its procedures.

(3) Prior to the adoption of any rules authorized by law, or the amendment or repeal thereof, the adopting agency shall, as far as practicable, publish in the bulletin provided in ORS 183.360, or otherwise circulate, notice of its intended action and afford interested persons opportunity to submit data or views orally or in writing. After consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. This subsection does not apply to general statements of policy, interpretive rules or rules solely governing the agency's organization or internal procedure.
[1957 c.717 §2]

183.340 Model rules of procedure to be published; adoption, by reference, of model rules permitted. The Attorney General shall prepare model rules of procedure appropriate for use by as many agencies as possible. The provisions of ORS 183.360, 183.370 and 183.380 shall apply to the model rules. Any agency may adopt all or part of the model rules by reference. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.010 to 183.050 for the filing of orders. The compilation of the model rules shall include a reference to the agencies which have adopted all or part of such rules, and in the case of partial adoption by an agency, to the specific rules or parts thereof adopted. Neither the Attorney General nor any agency shall adopt, amend or repeal the model rules or any part thereof unless he or it otherwise complies with the provisions of ORS 183.310 to 183.510 relating to adoption, amendment and repeal of rules.
[1957 c.717 §3 (3)]

183.350 Filing and taking effect of rules. (1) Each agency shall file with the Secretary of State rules promulgated by such agency in the manner provided by ORS 183.010 to 183.050.

(2) The effective date of such rules shall not be sooner than 10 days subsequent to publication in the bulletin provided in ORS 183.360, unless the agency finds, and recites the reasons therefor in full in the rule, that an earlier date is required, and that postponement would result in serious prejudice to the public interest, or the interest of the parties concerned. This subsection does not apply to general statements of policy, interpretive rules, or rules solely governing the agency's organization or internal procedure.
[1957 c.717 §3 (1), (2)]

183.360 Publication of agencies' rules and orders; adoption of published rules in lieu of former agency rules; judicial notice; citation. (1) The Secretary of State shall compile, index and publish all rules adopted by each agency pursuant to ORS 183.330 and 183.340 or filed with him pursuant to ORS 183.020 and remaining in effect. Compilations shall be supplemented or revised as often as necessary and at least once every two years. Such compilations may be adopted by agencies as a code of regulations, superseding all previous rules of such agency. The Secretary of State may make such compilations of other material published in the bulletin as he deems desirable.

(2) The Secretary of State shall publish at such intervals as he shall determine a bulletin in which is set forth the text of all rules and orders filed since the preceding issue. The Secretary of State may, in his discretion, publish in the bulletin any other administrative or executive document of public interest.

(3) The Secretary of State may, in his discretion, omit from the bulletin or the compilation rules or orders the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, and insert instead in the bulletin or compilation a notice stating the subject matter of the rules or orders so omitted and that copies may be obtained from the Secretary of State as provided by ORS 183.050.

(4) Courts shall take judicial notice of rules and orders filed with the Secretary of State and published pursuant to this section. Material so published may be cited as OAR,

followed by the chapter and section numbers designated in the publication.
[1957 c.717 §4 (1), (2), (3); 1961 c.464 §1]

183.370 Distribution of published rules. The Secretary of State shall forward free of charge one copy of the bulletins and compilations to each district attorney and county clerk. The county clerk's copy shall be maintained in the county law library, or if the county has no law library, in his office available for inspection by the public. In addition, bulletins and compilations may be distributed by the Secretary of State free of charge as provided for the distribution of legislative materials referred to in ORS 171.225. Further distribution of the bulletins or compilations shall be made as directed by the Department of General Services. Other copies of the bulletins and compilations shall be distributed by the Secretary of State at a cost determined in the manner provided in ORS 2.160 for the distribution of copies of Supreme Court Reports. Any agency may compile and publish its rules or all or part of its rules for purpose of distribution outside of the agency only after it proves to the satisfaction of the Department of General Services that agency publication is necessary in addition to the publications required to be made by the Secretary of State under ORS 183.360.
[1957 c.717 §4 (4); 1959 c.260 §1; 1969 c.174 §4]

183.380 Exceptions to application of ORS 183.360 and 183.370. The provisions of ORS 183.360 and 183.370 do not apply to general statements of policy, interpretive rules or rules solely governing the agency's organization or internal procedure.
[1957 c.717 §4 (5)]

183.390 Petitions requesting adoption of rules. Any interested person may petition an agency requesting the promulgation, amendment or repeal of any rule. Each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition.
[1957 c.717 §5]

183.400 Validity of rules, how determined. (1) The validity of any rule may be determined upon a petition for a declaratory judgment thereon filed as provided by ORS chapter 28 for declaratory judgment in actions at law or suits in equity. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question. However, this section shall not apply in any case where the petitioner is not bound by law to any course of conduct until after hearing required by law by the agency concerned. In such a case, the court may determine the validity of the rule, as provided in subsection (2) of this section, upon review of the order issued on such hearing, as provided by law or in ORS 183.310 to 183.510.

(2) The court shall declare the rule invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rule-making procedures.
[1957 c.717 §6]

183.410 Declaratory ruling, by agency, of applicability of rule or statute to petitioner. On petition of any interested person, any agency may in its discretion issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling, if issued after argument and stated to be binding, is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. However, the agency may, where the ruling is adverse to the petitioner, review the ruling and alter it if requested by the petitioner. Binding rulings provided by this section are subject to review in the circuit court in the manner provided in ORS 183.480 for the review of decisions in contested cases. Each agency shall prescribe by rule the form for such petitions and the procedure for this submission, consideration and disposition.
[1957 c.717 §7]

183.420 Notice, hearing and record in contested cases. In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place and issues involved, but, if, by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable and opportunity shall be afforded all parties to present evidence and argument with respect thereto. This section shall not be construed as authorizing any agency to

proceed against any person unless there is reasonable cause for such action. At such hearing, each party shall have the right to introduce evidence for the record and to be represented by counsel. The agency shall prepare an official record which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe testimony unless requested for purposes of rehearing or court review. Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order or default; provided that an order adverse to a party may be issued upon default only upon prima facie case made on the record by the agency. Each agency shall adopt appropriate rules of procedure for notice and hearing in contested cases. Testimony shall be taken upon oath or affirmation of the witness from whom received unless all parties affected stipulate in writing to the contrary. For purpose of judicial review under ORS 183.310 to 183.510, testimony not taken upon oath or affirmation shall be excluded from the record of the case. Officials presiding at such hearings shall have authority, subject to the rules of the agency, to administer oaths and affirmations to witnesses.
[1957 c.717 §8 (1)]

183.430 Hearing on refusal to renew license; exceptions. (1) In the case of any license required to pursue any commercial activity, trade, occupation or profession which must be periodically renewed, where the licensee has made timely application for renewal in accordance with the rules of the agency, such license shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order of grant or denial of such renewal. In case an agency proposes to refuse to renew such license, upon demand of the licensee, the agency must grant hearing as provided by ORS 183.310 to 183.510 before issuance of order of refusal to renew.

(2) In any case where the agency finds a serious danger to the public health or safety, the agency may suspend or refuse to renew a license without hearing, but if the licensee demands a hearing within 90 days of the date of notice to the licensee of such suspension or refusal to renew, then a hearing must be granted to the licensee as soon as practicable after such demand, and the agency shall issue an order pursuant to such hearing as required by ORS 183.310 to 183.510 confirming, altering or revoking its earlier order; provided, however, that such hearing need not be held where suspension is accompanied by citation for violation, and the violation is subject to judicial determination in any court of this state.
[1957 c.717 §8 (3), (4); 1965 c.212 §1]

183.440 Subpenas in contested cases. Agency subpenas authorized by law shall be issued to any party to a contested case upon request and, to the extent required by agency rule, upon a statement or showing of general relevance and reasonable scope of the evidence sought. If any person fails to comply with any subpena so issued or any party or witness refuses to testify on any matters on which he may be lawfully interrogated, the judge of the circuit court of any county, on the application of the agency or of a designated representative of the agency, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpena issued from such court or a refusal to testify therein.
[1957 c.717 §8 (2)]

183.450 Evidence, cross-examination and official notice in contested cases. In contested cases:

(1) Any oral or documentary evidence may be received, provided that hearsay evidence shall not be admissible over an objection based on lack of opportunity to cross-examine, but every agency shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence, and no sanction shall be imposed, or rule or order be issued, except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence. Agencies shall give effect to the rules of privilege recognized by law.

(2) All evidence shall be offered and made a part of the record in the case, and except as provided in subsection (4) of this section no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(3) Every party entitled as of right to hearing under subsection (2) of ORS 183.310 shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence. Parties

permitted to intervene by the agency shall have such rights as determined by the agency by rule or otherwise.

(4) Agencies may take notice of judicially cognizable facts, and they may take notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified, either before or during the hearing, or by reference in a tentative decision, or otherwise, of the material so noticed and shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented to them.
[1957 c.717 §9]

183.460 Examination of evidence by agency in contested cases. Whenever in a contested case a majority of the officials of the agency who are to render the final decision have not heard or read the evidence, the decision, if adverse to a party entitled as of right of hearing under subsection (2) of ORS 183.310, but not including the agency itself, shall not be made until a proposal for decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall in such case personally consider the whole record or such portions thereof as may be cited by the parties.
[1957 c.717 §10]

183.470 Decisions and orders in contested cases. Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record, may be accompanied by an opinion, and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the determination of each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or to his attorney of record.
[1957 c.717 §11]

183.480 Judicial review of contested cases. (1) (a) Except as otherwise provided specifically by statute, any party to an agency proceeding aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review thereof under ORS 183.310 to 183.510.

(b) Judicial review of decisions in contested cases by parties shall be solely as provided by ORS 183.310 to 183.510.

(2) Jurisdiction for judicial review is conferred upon the Circuit Court for Marion County and upon the circuit court for the county in which the petitioner resides or has his principal business office. Proceedings for review shall be instituted by filing a petition in either of such courts. The petition may be filed within 60 days only following entry of the decision. The petition shall state the nature of the petitioner's interest, the facts showing how the petitioner is aggrieved by the agency decision, and the ground or grounds upon which the petitioner contends the decision should be reversed and set aside. True copies of the petition shall be served by registered mail upon the agency and all other parties of record in the agency proceeding. No responsive pleading shall be required of the agency. The court, in its discretion, may permit other interested persons to intervene; provided that this section shall not be construed so as to authorize the court to grant any right to such intervening parties where agency action is required by law for such grant.

(3) The filing of the petition shall not stay enforcement of the agency decision, but the agency may do so, or the reviewing court may order a stay upon the giving of a bond or other undertaking or upon such other terms as it deems proper. All proceedings for review shall be given precedence on the docket over all other civil cases except those given equal status by statute. Any bond or other undertaking executed pursuant to this subsection shall be in favor of the State of Oregon for its benefit and for the benefit of whom it may concern and may be enforced by the agency or any other persons concerned in an appropriate proceeding as their interests may appear.

(4) Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record

may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence to the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and decision by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision, or its certificate that it elects to stand on its original findings and decision, as the case may be.

(6) The review shall be conducted by the court without a jury as a suit in equity and shall be confined to the record, except that, in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

(7) The court may adopt the agency findings of fact and affirm the decision of the agency; or it may reverse and set aside the agency decision, or reverse and remand for further proceedings, after review of all the facts disclosed by the record, and any additional facts established under the provisions of subsection (6) of this section. The court shall thereupon enter its decree. In the case of reversal the court shall make special findings of fact based upon evidence in the record and conclusions of law indicating clearly all respects in which the agency's decision is erroneous.

[1957 c.717 §12; 1963 c.449 §1]

183.490 Agency may be compelled to act. The court may, upon petition as described in ORS 183.480, compel an agency to act where it has unlawfully refused to act, or unreasonably delayed action.

[1957 c.717 §13]

183.500 Appeals. Any party to the proceedings before the circuit court may appeal from the decree of that court to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals from the circuit court in suits in equity.

[1957 c.717 §14; 1969 c.198 §76]

183.510 ORS 183.310 to 183.510 to supersede conflicting Acts. All Acts or parts of Acts which are inconsistent with the provisions of ORS 183.310 to 183.510 are hereby repealed, but such repeal shall not affect pending proceedings. No later Act shall be deemed to supersede ORS 183.310 to 183.510, whether by implication or otherwise, unless such Act specifically provides that its provisions shall supersede.

[1957 c.717 §16]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1969.

Robert W. Lundy
Legislative Counsel