



Ohio Administrative Code

Rule 5160-70-03 Chapter 119. hearings: department notice, making a hearing request, and failure to make a hearing request.

Effective: January 1, 2015

(A) Notice of intended action

(1) Whenever ODM proposes to take an action that the Ohio general assembly has expressly made subject to the administrative adjudication procedure outlined in Chapter 119. of the Revised Code, ODM shall give notice of the intended action to the party informing the party of the party's right to a hearing. Notice shall be given by certified mail, return receipt requested, and shall, at a minimum, include all of the following:

(a) The specific action or actions ODM intends to take;

(b) The charges or other reasons for the proposed action or actions;

(c) The statutes or rules directly involved;

(d) A statement informing the party that the party is entitled to a hearing if the party requests it within thirty calendar days of the time of mailing the notice;

(e) A statement informing the party that at the hearing the party may appear in person or through an attorney;

(f) A statement informing the party that the party or the party's attorney may present the party's position, arguments or contentions entirely in writing, and that at the hearing the party or the party's attorney may present evidence and examine witnesses appearing for and against the party; and

(g) A statement informing the party that rules governing hearings in accordance with Chapter 119. of the Revised Code are found in Chapter 5160-70 of the Administrative Code.

(2) ODM shall also mail a copy of the notice to the party's attorney or other representative of record.



To qualify as an attorney or representative of record, the party or the attorney or representative shall notify ODM, in writing, that the attorney or representative is to be designated the attorney or representative of record. The notification shall include the address where ODM should mail the notice to the attorney or representative of record. The mailing of notice to the party's attorney or representative is not deemed to perfect service of the notice. Failure to mail a copy of the notice to the attorney or representative of record shall not result in failure of otherwise perfected service upon the party. In those instances where a party is a corporation doing business in Ohio or is incorporated in Ohio, the mailing of notice to the corporation's statutory agent pursuant to sections 1701.07 and 1703.19 of the Revised Code shall perfect service, provided that all the requirements of paragraph (A) of this rule are met.

(3) When any notice sent by certified mail pursuant to this rule is returned because the party fails to claim the notice, ODM shall send the notice by ordinary mail to the party at the party's last known address and shall obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained unless the notice is returned showing failure of delivery.

(4) If any notice sent by certified or ordinary mail is returned for failure of delivery, ODM either shall make personal delivery of the notice by an employee or agent of ODM or shall cause a summary of the substantive provisions of the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known address of the party is located. When notice is given by publication, a proof-of-publication affidavit, with the first publication of the notice set forth in the affidavit, shall be mailed by ordinary mail to the party at the party's last known address and the notice shall be deemed received as of the date of the last publication. An employee or agent of ODM may make personal delivery of the notice upon a party at any time.

(5) Refusal of delivery by personal service or by mail is not failure of delivery, and service is deemed to be complete at the time of personal refusal or at the time of receipt by ODM of the refused mail as demonstrated by the ODM time and date stamp. Failure of delivery occurs only when a mailed notice is returned by the postal authority marked undeliverable, address or addressee unknown, or forwarding address unknown or expired.

(B) Making a request for a hearing



(1) Any request for a hearing made as the result of notice issued pursuant to paragraph (A) of this rule must be made in writing and mailed or delivered to the depository agent within thirty calendar days of the following, as applicable:

(a) The time of mailing the notice if notice is given pursuant to paragraph (A)(1) of this rule;

(b) The date that service is complete if notice is given pursuant to paragraph (A)(3) or (A)(5) of this rule;

(c) The date of the last publication if notice is given by publication pursuant to paragraph (A)(4) of this rule; or

(d) The date of personal service.

(2) If a request for a hearing is mailed to the depository agent, the request is deemed to have been made as follows:

(a) If the request is mailed by certified mail, as of the date stamped by the U.S. postal service on its receipt form (PS form 3800 or any future equivalent postal service form);

(b) If the request is mailed by ordinary U.S. mail, as of the date of the postmark appearing upon the envelope containing the request;

(c) If the request is mailed by ordinary U.S. mail and the postmark is illegible or fails to appear on the envelope, as of the date of its receipt by the depository agent as evidenced by the agent's time stamp.

(3) If a request for a hearing is made by facsimile transmission or by electronic mail to the depository agent, the request is deemed to have been made as of the date of its receipt as evidenced by the receipt date generated by the facsimile transmission or the date of receipt shown in the source code of the electronic mail received by the depository agent.



(4) If a request for a hearing is mailed, personally delivered, made by facsimile transmission, or made by electronic mail to a person or address other than the depository agent, the request is deemed to have been made as of the date of its receipt by the depository agent as evidenced by the depository agent's time stamp.

(5) If a request for a hearing is personally delivered to the depository agent, the request is deemed to have been made as of the date of its receipt as evidenced by the depository agent's time stamp.

(6) All requests for hearings must include a copy of the notice of intended action that is being contested and clearly identify the party who is making the request by providing the party's name, address, and phone number.

(C) Failure to request a hearing

When a party fails to request a hearing or the request is not submitted timely, ODM shall issue an adjudication order adopting and implementing the notice of intended action.