

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1136

By: Dahm

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5
6 AS INTRODUCED

7 An Act relating to statutes and reports; amending 75
8 O.S. 2011, Sections 250.4a, 250.10, as amended by
9 Section 49, Chapter 227, O.S.L. 2013 and 251 (75 O.S.
10 Supp. 2015, Section 250.10), which relate to the
11 Administrative Procedures Act; providing for rules to
12 be available on agency website; removing obsolete
13 language; modifying requirement for agency response
14 to certain requests within certain time period;
15 requiring certain agency information on national
16 standards to be available on agency website; amending
17 75 O.S. 2011, Section 255, which relates to the
18 Oklahoma Register; authorizing Secretary of State to
19 provide certain digital copies of publications;
20 amending 75 O.S. 2011, Sections 302, 305, 307.1 and
21 317, which relate to promulgation of rules; requiring
22 certain information be available on agency website;
23 requiring agency to make certain response within
24 certain time period; removing certain advisory only
provision from certain legislative committee
functions; modifying time period for certain rule
rehearing; and providing an effective date.

25 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

26 SECTION 1. AMENDATORY 75 O.S. 2011, Section 250.4a, is
27 amended to read as follows:

28 Section 250.4a. A. Any agency exempt from all or part of the
29 Administrative Procedures Act pursuant to subsection A of Section

1 250.4 of this title shall maintain and make available for public
2 inspection its exempt rules at its principal place of business and
3 on the agency's website or the state website as available.

4 B. ~~It is recognized by the Oklahoma Legislature that agencies~~
5 ~~specified by subsection A of this section have published rules~~
6 ~~containing obsolete rules or internal policy statements or agency~~
7 ~~statements which do not meet the Administrative Procedures Act~~
8 ~~definition of rules. Therefore, by December 31, 2005, each~~ Each
9 such agency shall annually conduct an internal review of its rules
10 to determine whether each of its rules is current and is a rule as
11 such term is defined by the Administrative Procedures Act. Any rule
12 determined by an agency to be obsolete or an internal policy
13 statement or any agency statement which does not meet the definition
14 of a rule pursuant to the Administrative Procedures Act shall be
15 deleted by the agency. Notice of such deletion shall be submitted
16 to the Speaker of the House of Representatives, the President Pro
17 Tempore of the Senate and the Governor for informational purposes.

18 C. The provisions of this section shall not be construed to
19 authorize any agency to amend any rule or to delete any rule which
20 affects any private rights or procedures available to the public.

21 SECTION 2. AMENDATORY 75 O.S. 2011, Section 250.10, as
22 amended by Section 49, Chapter 227, O.S.L. 2013 (75 O.S. Supp. 2015,
23 Section 250.10), is amended to read as follows:
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1 Section 250.10. The Governor by Executive Order or either house
2 of the Legislature or both houses of the Legislature by resolution,
3 or a small business, may request an agency to review its rules to
4 determine whether or not the rules in question should be amended,
5 repealed or redrafted. The agency shall respond to any such
6 requests ~~from the Governor or the Legislature~~ within ~~ninety (90)~~
7 thirty (30) calendar days of such request.

8 SECTION 3. AMENDATORY 75 O.S. 2011, Section 251, is
9 amended to read as follows:

10 Section 251. A. 1. Upon the request of the Secretary, each
11 agency shall furnish to the Office a complete set of its permanent
12 rules in such form as is required by the Secretary or as otherwise
13 provided by law.

14 2. The Secretary shall promulgate rules to ensure the effective
15 administration of the provisions of Article I of the Administrative
16 Procedures Act. The rules shall include, but are not limited to,
17 rules prescribing paper size, numbering system, and the format of
18 documents required to be filed pursuant to the provisions of the
19 Administrative Procedures Act or such other requirements as deemed
20 necessary by the Secretary to implement the provisions of the
21 Administrative Procedures Act.

22 B. 1. Each agency shall file the number of copies specified by
23 the Secretary of all new rules, and all amendments, revisions or
24 revocations of existing rules attested to by the agency, pursuant to

1 the provisions of Section 254 of this title, with the Office within
2 thirty (30) calendar days after they become finally adopted.

3 2. An agency filing rules pursuant to the provisions of this
4 subsection:

5 a. shall prepare the rules in plain language which can be
6 easily understood,

7 b. shall not unnecessarily repeat statutory language.

8 Whenever it is necessary to refer to statutory
9 language in order to effectively convey the meaning of
10 a rule interpreting that language, the reference shall
11 clearly indicate the portion of the language which is
12 statutory and the portion which is the agency's
13 amplification or interpretation of that language,

14 c. shall indicate whether a rule is new, amends an
15 existing permanent rule or repeals an existing
16 permanent rule. If a rule amends an existing rule,
17 the rule shall indicate the language to be deleted
18 typed with a line through the language and language to
19 be inserted typed with the new language underscored,

20 d. shall state if the rule supersedes an existing
21 emergency rule,

22 e. shall include a reference to any rule requiring a new
23 or revised form in a note to the rule. The Secretary
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1 shall insert that reference in "The Oklahoma Register"
2 as a notation to the affected rule,

3 f. shall prepare, in plain language, an analysis of new
4 or amended rules. The analysis shall include but not
5 be limited to a reference to any statute that the rule
6 interprets, any related statute or any related rule,

7 g. may include with its rules, brief notes,
8 illustrations, findings of facts, and references to
9 digests of Supreme Court cases, other court decisions,
10 or Attorney General's opinions, and other explanatory
11 material. Such material may be included if the
12 material is labeled or set forth in a manner which
13 clearly distinguishes it from the rules,

14 h. shall include other information, in such form and in
15 such manner as is required by the Secretary, and

16 i. may change the format of existing rules without any
17 rulemaking action by the agency in order to comply
18 with the standard provisions established by the
19 Secretary for "Code" and "The Oklahoma Register"
20 publication so long as there is no substantive change
21 to the rule.

22 C. The Secretary is authorized to determine a numbering system
23 and other standardized format for documents to be filed and may
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1 refuse to accept for publication any document that does not
2 substantially conform to the promulgated rules of the Secretary.

3 D. In order to avoid unnecessary expense, an agency may use the
4 published standards established by organizations and technical
5 societies of recognized national standing, other state agencies, or
6 federal agencies by incorporating the standards or rules in its
7 rules or regulations by reference to the specific issue or issues of
8 publications in which the standards are published, without
9 reproducing the standards in full. The standards shall be readily
10 available to the public for examination at the administrative
11 offices of the agency and on the agency's website. In addition, a
12 copy of such standards shall be kept and maintained by the agency
13 pursuant to the provisions of the Preservation of Essential Records
14 Act.

15 E. The Secretary shall provide for the publication of all
16 Executive Orders received pursuant to the provisions of Section 664
17 of Title 74 of the Oklahoma Statutes.

18 F. The Secretary may authorize or require the filing of rules
19 or Executive Orders by or through electronic data or machine
20 readable equipment in such form and manner as is required by the
21 Secretary.

22 SECTION 4. AMENDATORY 75 O.S. 2011, Section 255, is
23 amended to read as follows:
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1 Section 255. A. 1. The Secretary is hereby authorized,
2 directed, and empowered to publish "The Oklahoma Register" not less
3 than monthly for the publication of new rules, any amendment,
4 revision or revocation of an existing rule, emergency rules, any
5 notices of such rulemaking process and Executive Orders as are
6 required by law to be published in "The Oklahoma Register". Said
7 rules or amendments, revisions, or revocations of existing rules
8 shall be published in the first issue of "The Oklahoma Register"
9 published pursuant to Sections 251, 253, 256, 303, 303.1, 303.2 and
10 308 of this title after the date of acceptance by the Secretary.
11 The Secretary shall determine how often online publication should be
12 updated and may provide digital copies of publications as deemed
13 appropriate.

14 2. The Secretary shall cause a copy of each publication of "The
15 Oklahoma Register" to be sent to those county clerks who request it,
16 to members of the Legislature upon request, and to such other
17 agencies, libraries, and officials as the Secretary may select. The
18 Secretary may charge recipients of the publication a cost sufficient
19 to defray the cost of publication and mailing. The Secretary may
20 provide digital copies as he or she deems appropriate.

21 3. The Secretary shall cause a copy of all rules, all new
22 rules, and all amendments, revisions, or revocations of existing
23 rules to be on file and available for public examination in the
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1 Office during normal office hours and on the agency's website,
2 provided such information is electronically accessible.

3 4. The Secretary shall promulgate rules to systematize the
4 designations of rules. To establish said system or to preserve
5 uniformity of designations, the Secretary may require the agency to
6 change the title or numbering of any rule or any amendment,
7 revision, or revocation thereof.

8 B. The Secretary is authorized to provide for the publication
9 of rules in summary form when the rules are of such length that
10 publication of the full text would be too costly. The summary shall
11 be prepared by the agency submitting the rules and shall state where
12 the full text of the rule may be obtained.

13 C. The notice required pursuant to the provisions of Section
14 303 of this title shall be published in "The Oklahoma Register"
15 prior to the adoption of a new rule, or amendment, revision or
16 revocation of any existing rule. The notice shall include the
17 information required by Section 303 of this title.

18 SECTION 5. AMENDATORY 75 O.S. 2011, Section 302, is
19 amended to read as follows:

20 Section 302. A. In addition to other rulemaking requirements
21 imposed by law, each agency which has rulemaking authority, shall:

22 1. Promulgate as a rule a description of the organization of
23 the agency, stating the general course and method of the operations
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1 of the agency and the methods whereby the public may obtain
2 information or make submissions or requests;

3 2. Promulgate rules of practice setting forth the nature and
4 requirements of all formal and informal procedures available,
5 including a description of all forms and instructions issued by the
6 agency for use by the public;

7 3. Make available for public inspection, and on the agency's
8 website if such information is electronically available, all rules
9 and all other written statements of policy or interpretations
10 formulated, adopted, promulgated or used by the agency in the
11 discharge of its functions;

12 4. Make available for public inspection pursuant to the
13 provisions of the Open Records Act, and on the agency's website, all
14 final orders, decisions and opinions.

15 B. 1. An agency shall maintain an official rulemaking record
16 for each proposed rule or promulgated rule. The record and
17 materials incorporated by reference shall be available for public
18 inspection.

19 2. The agency rulemaking record shall contain:

- 20 a. copies of all publications in "The Oklahoma Register"
21 with respect to the rule or the proceeding upon which
22 the rule is based,
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- 1 b. copies of any portions of the agency's public
2 rulemaking docket containing entries relating to the
3 rule or the proceeding upon which the rule is based,
4 c. all written petitions, requests, submissions, and
5 comments received by the agency and all other written
6 materials considered by the agency in connection with
7 the formulation, proposal, or adoption of the rule or
8 the proceeding upon which the rule is based,
9 d. any official transcript of oral presentations made in
10 the proceeding upon which the rule is based or, if not
11 transcribed, any tape recording or stenographic record
12 of those presentations, and any memorandum prepared by
13 a presiding official summarizing the contents of those
14 presentations,
15 e. a copy of any regulatory analysis prepared for the
16 proceeding upon which the rule is based,
17 f. a copy of the rule and analysis of each such rule
18 filed with the Office pursuant to Section 251 of this
19 title,
20 g. all petitions for exceptions to, amendments of, or
21 repeal or suspension of, the rule,
22 h. a copy of the rule impact statement, if made, and
23 i. such other information concerning such rules as may be
24 determined necessary by the agency.

1 3. Upon judicial review, the record required by this section
2 constitutes the official agency rulemaking record with respect to a
3 rule. Except as otherwise required by a provision of law, the
4 agency rulemaking record need not constitute the exclusive basis for
5 agency action on that rule or for judicial review thereof.

6 C. 1. By December 31, 2002, each agency that issues precedent-
7 setting orders shall maintain and index all such orders that the
8 agency intends to rely upon as precedent. The index and the orders
9 shall be available for public inspection and copying in the main
10 office and each regional or district office of the agency or on the
11 agency's website if such information is electronically available.

12 The orders shall be indexed by subject.

13 2. After December 31, 2002, an order shall not be relied upon
14 as precedent by an agency to the detriment of any person until it
15 has been made available for public inspection and indexed in the
16 manner described in this subsection.

17 3. An agency shall consistently apply rules to each person
18 subject to the jurisdiction of the agency regarding issuance of
19 orders.

20 D. An agency shall not by internal policy, memorandum, or other
21 form of action not otherwise authorized by the Administrative
22 Procedures Act:

- 23 1. Amend, interpret, implement, or repeal a statute or a rule;
24 2. Expand upon or limit a statute or a rule; and

1 3. Except as authorized by the Constitution of the United
2 States, the Oklahoma Constitution or a statute, expand or limit a
3 right guaranteed by the Constitution of the United States, the
4 Oklahoma Constitution, a statute, or a rule.

5 E. Any agency memorandum, internal policy, or other form of
6 action violative of this section or the spirit thereof is null,
7 void, and unenforceable.

8 F. This section shall not be construed to prohibit an agency
9 issuing an opinion or administrative decision which is authorized by
10 statute provided that, unless such opinion or administrative
11 decision is issued pursuant to the procedures required pursuant to
12 the Administrative Procedures Act, such decision or opinion shall
13 not have the force and effect of law.

14 SECTION 6. AMENDATORY 75 O.S. 2011, Section 305, is
15 amended to read as follows:

16 Section 305. An interested person may petition an agency
17 requesting the promulgation, amendment, or repeal of a rule. Each
18 agency shall prescribe by rule the form for petitions and the
19 procedure for their submission, consideration, and disposition. The
20 agency shall act upon said petition within a reasonable time. If,
21 within thirty (30) calendar days after submission of a petition, the
22 agency has not initiated rulemaking proceedings in accordance with
23 the Administrative Procedures Act, the petition shall be deemed to
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1 have been denied, and the agency shall notify the interested person
2 that no action has been taken.

3 SECTION 7. AMENDATORY 75 O.S. 2011, Section 307.1, is
4 amended to read as follows:

5 Section 307.1. A. The Speaker of the House of Representatives
6 and the President Pro Tempore of the Senate may each establish a
7 rule review committee or designate standing committees of each such
8 house to review administrative rules.

9 B. Such committees may meet separately or jointly at any time,
10 during sessions of the Legislature and in the interim.

11 C. The function of the committees so established or designated
12 shall be the review and promotion of adequate and proper rules by
13 agencies and developing an understanding on the part of the public
14 respecting such rules. ~~Such function shall be advisory only.~~

15 Each committee may review all adopted rules and such other rules
16 the committee deems appropriate and may make recommendations
17 concerning such rules to their respective house of the Legislature,
18 or to the agency adopting the rule, or to both their respective
19 house of the Legislature and the agency.

20 D. In addition to the review of agency-adopted rules pursuant
21 to this act, each such committee shall have the power and duty to:

22 1. Conduct a continuous study and investigations as to whether
23 additional legislation or changes in legislation are needed based on
24 various factors, including but not limited to, review of proposed

1 rules, review of existing rules including but not limited to
2 consideration of amendments to or repeal of existing rules, the lack
3 of rules, the ability of agencies to promulgate such rules, and the
4 needs of administrative agencies;

5 2. Conduct a continuous study of the rulemaking process of all
6 state agencies including those agencies exempted by Section 250.4 of
7 this title for the purpose of improving the rulemaking process;

8 3. Conduct such other studies and investigations relating to
9 rules as may be determined to be necessary by the committee; and

10 4. Monitor and investigate compliance of agencies with the
11 provisions of the Administrative Procedures Act, make periodic
12 investigations of the rulemaking activities of all agencies and
13 evaluate and report on all rules in terms of their propriety, legal
14 adequacy, relation to statutory authorization, economic and
15 budgetary effects and public policy.

16 SECTION 8. AMENDATORY 75 O.S. 2011, Section 317, is
17 amended to read as follows:

18 Section 317. A. A final agency order issued by an
19 administrative head of an agency shall be subject to rehearing,
20 reopening or reconsideration by such administrative head. Any
21 application or request for such rehearing, reopening or
22 reconsideration shall be made by any party aggrieved by the final
23 agency order within ~~ten (10)~~ thirty (30) days from the date of the
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1 entry of such final agency order. The grounds for such action shall
2 be either:

3 1. Newly discovered or newly available evidence, relevant to
4 the issues;

5 2. Need for additional evidence adequately to develop the facts
6 essential to proper decision;

7 3. Probable error committed by the agency in the proceeding or
8 in its decision such as would be ground for reversal on judicial
9 review of the final agency order;

10 4. Need for further consideration of the issues and the
11 evidence in the public interest; or

12 5. A showing that issues not previously considered ought to be
13 examined in order properly to dispose of the matter.

14 B. The order of the agency granting rehearing, reconsideration
15 or review, or the petition of a party therefor, shall set forth the
16 grounds which justify such action.

17 C. Nothing in this section shall prevent rehearing, reopening
18 or reconsideration of a matter by any agency in accordance with
19 other statutory provisions applicable to such agency, or, at any
20 time, on the ground of fraud practiced by the prevailing party or of
21 procurement of the order by perjured testimony or fictitious
22 evidence.

23 D. On reconsideration, reopening, or rehearing, the matter may
24 be heard by the agency, or it may be referred to a hearing examiner.

1 The hearing shall be confined to those grounds upon which the
2 reconsideration, reopening or rehearing was ordered.

3 E. If an application for rehearing shall be timely filed, the
4 period within which judicial review, under the applicable statute,
5 must be sought, shall run from the final disposition of such
6 application.

7 SECTION 9. This act shall become effective November 1, 2016.

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