

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

HOUSE BILL 1886

By: Crosswhite Hader

AS INTRODUCED

An Act relating to statutes and reports; amending 75 O.S. 2011, Section 303, as amended by Section 50, Chapter 227, O.S.L. 2013 (75 O.S. Supp. 2018, Section 303), which relates to the Administrative Procedures Act; modifying requirements prior to adoption of rule; and providing an effective date.

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

SECTION 1. AMENDATORY 75 O.S. 2011, Section 303, as amended by Section 50, Chapter 227, O.S.L. 2013 (75 O.S. Supp. 2018, Section 303), is amended to read as follows:

Section 303. A. Prior to the adoption of any rule or amendment or revocation of a rule, the agency shall:

1. Cause notice of any intended action to be published in "The Oklahoma Register" pursuant to subsection B of this section;

2. For at least thirty (30) days after publication of the notice of the intended rulemaking action, afford a comment period for all interested persons to submit data, views or arguments,

1 orally or in writing. The agency shall consider fully all written
2 and oral submissions respecting the proposed rule;

3 3. Hold a hearing, if required, as provided by subsection C of
4 this section;

5 4. Consider the effect its intended action may have on the
6 various types of business and governmental entities. Except where
7 such modification or variance is prohibited by statute or
8 constitutional constraints, if an agency finds that its actions may
9 adversely affect any such entity, the agency may modify its actions
10 to exclude that type of entity, or may "tier" its actions to allow
11 rules, penalties, fines or reporting procedures and forms to vary
12 according to the size of a business or governmental entity or its
13 ability to comply or both. For business entities, the agency shall
14 include a description of the probable quantitative and qualitative
15 impact of the proposed rule, economic or otherwise, and use
16 quantifiable data to the extent possible, taking into account both
17 short-term and long-term consequences; and

18 5. Consider the effect its intended action may have on the
19 various types of consumer groups. If an agency finds that its
20 actions may adversely affect such groups, the agency may modify its
21 actions to exclude that type of activity.

22 B. The notice required by paragraph 1 of subsection A of this
23 section shall include, but not be limited to:

24 1. In simple language, a brief summary of the rule;

1 2. The proposed action being taken;

2 3. The circumstances which created the need for the rule;

3 4. The specific legal authority authorizing the proposed rule;

4 5. The intended effect of the rule;

5 6. If the agency determines that the rule affects business
6 entities, a request that such entities provide the agency, within
7 the comment period, in dollar amounts if possible, the increase in
8 the level of direct costs such as fees, and indirect costs such as
9 reporting, recordkeeping, equipment, construction, labor,
10 professional services, revenue loss, or other costs expected to be
11 incurred by a particular entity due to compliance with the proposed
12 rule;

13 7. The time when, the place where, and the manner in which
14 interested persons may present their views thereon pursuant to
15 paragraph 3 of subsection A of this section;

16 8. Whether or not the agency intends to issue a rule impact
17 statement according to subsection D of this section and where copies
18 of such impact statement may be obtained for review by the public;

19 9. The time when, the place where, and the manner in which
20 persons may demand a hearing on the proposed rule if the notice does
21 not already provide for a hearing. If the notice provides for a
22 hearing, the time and place of the hearing shall be specified in the
23 notice; and
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1 10. Where copies of the proposed rules may be obtained for
2 review by the public. An agency may charge persons for the actual
3 cost of mailing a copy of the proposed rules to such persons.

4 The number of copies of such notice as specified by the
5 Secretary shall be submitted to the Secretary who shall publish the
6 notice in "The Oklahoma Register" pursuant to the provisions of
7 Section 255 of this title.

8 Prior to or within three (3) days after publication of the
9 notice in "The Oklahoma Register", the agency shall cause a copy of
10 the notice of the proposed rule adoption and the rule impact
11 statement, if available, to be mailed to all persons who have made a
12 timely request of the agency for advance notice of its rulemaking
13 proceedings. Provided, in lieu of mailing copies, an agency may
14 electronically notify interested persons that a copy of the proposed
15 rule and the rule impact statement, if available, may be viewed on
16 the agency's website. If an agency posts a copy of the proposed
17 rule and rule impact statement on its website, the agency shall not
18 charge persons for the cost of downloading or printing the proposed
19 rule or impact statement. Each agency shall maintain a listing of
20 persons or entities requesting such notice.

21 C. 1. If the published notice does not already provide for a
22 hearing, an agency shall schedule a hearing on a proposed rule if,
23 within thirty (30) days after the published notice of the proposed
24 rule adoption, a written request for a hearing is submitted by:

- a. at least ten persons,
- b. a political subdivision,
- c. an agency, or
- d. an association having not less than twenty-five members.

At that hearing persons may present oral argument, data, and views on the proposed rule.

2. A hearing on a proposed rule may not be held earlier than thirty (30) days after notice of the hearing is published pursuant to subsection B of this section.

3. The provisions of this subsection shall not be construed to prevent an agency from holding a hearing or hearings on the proposed rule although not required by the provisions of this subsection; provided that notice of such hearing shall be published in "The Oklahoma Register" at least thirty (30) days prior to such hearing.

D. 1. Except as otherwise provided in this subsection, an agency shall issue a rule impact statement of a proposed rule prior to or within fifteen (15) days after the date of publication of the notice of proposed rule adoption. The rule impact statement may be modified after any hearing or comment period afforded pursuant to the provisions of this section.

2. Except as otherwise provided in this subsection, the rule impact statement shall include, but not be limited to:

- a. a brief description of the purpose of the proposed rule,
- b. a description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the agency from any private or public entities,
- c. a description of the classes of persons who will benefit from the proposed rule,
- d. a description of the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change,
- e. the probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency,
- f. a determination of whether implementation of the proposed rule will have an economic impact on any

1 political subdivisions or require their cooperation in
2 implementing or enforcing the rule,

3 g. a determination of whether implementation of the
4 proposed rule may have an adverse economic effect on
5 small business as provided by the Oklahoma Small
6 Business Regulatory Flexibility Act,

7 h. an explanation of the measures the agency has taken to
8 minimize compliance costs and a determination of
9 whether there are less costly or nonregulatory methods
10 or less intrusive methods for achieving the purpose of
11 the proposed rule,

12 i. a determination of the effect of the proposed rule on
13 the public health, safety and environment and, if the
14 proposed rule is designed to reduce significant risks
15 to the public health, safety and environment, an
16 explanation of the nature of the risk and to what
17 extent the proposed rule will reduce the risk,

18 j. a determination of any detrimental effect on the
19 public health, safety and environment if the proposed
20 rule is not implemented, and

21 k. the date the rule impact statement was prepared and if
22 modified, the date modified.

23 3. To the extent an agency for good cause finds the preparation
24 of a rule impact statement or the specified contents thereof are

1 unnecessary or contrary to the public interest in the process of
2 adopting a particular rule, the agency may request the Governor to
3 waive such requirement. Upon request by an agency, the Governor may
4 also waive the rule impact statement requirements if the agency is
5 required to implement a statute or federal requirement that does not
6 require an agency to interpret or describe the requirements, such as
7 federally mandated provisions which afford the agency no discretion
8 to consider less restrictive alternatives. If the Governor fails to
9 waive such requirement, in writing, prior to publication of the
10 notice of the intended rulemaking action, the rule impact statement
11 shall be completed. The determination to waive the rule impact
12 statement shall not be subject to judicial review.

13 4. The rule shall not be invalidated on the ground that the
14 contents of the rule impact statement are insufficient or
15 inaccurate.

16 E. In addition to the requirements listed in subsection A of
17 this section, a proposed rule that mentions or refers to another
18 state agency shall notify the affected agency at least thirty (30)
19 days prior to the hearing for adoption of the rule.

20 F. Upon completing the requirements of this section, an agency
21 may adopt a proposed rule. No rule is valid unless adopted in
22 substantial compliance with the provisions of this section.

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SECTION 2. This act shall become effective November 1, 2019.

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