

1 ENGROSSED HOUSE
2 BILL NO. 3281

By: Hall, Crosswhite Hader, and
Kendrix of the House

3 and

4 Bergstrom of the Senate
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8 An Act relating to the Administrative Procedures Act;
9 enacting the Guidance Transparency Act; amending 75
10 O.S. 2021, Sections 250.3, as last amended by Section
11 1, Chapter 420, O.S.L. 2025, 250.4a, 250.9, as
12 amended by Section 1, Chapter 7, O.S.L. 2024, and 302
13 (75 O.S. Supp. 2025, Sections 250.3 and 250.9), which
14 relate to definitions and other provisions; modifying
15 definitions; providing for public inspection of
16 guidance documents; providing for submission of
17 guidance documents; prescribing requirements for
18 publication; providing for noncodification; and
19 providing an effective date.

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

21 SECTION 1. NEW LAW A new section of law not to be
22 codified in the Oklahoma Statutes reads as follows:

23 This act shall be known and may be cited as the "Guidance
24 Transparency Act".

SECTION 2. AMENDATORY 75 O.S. 2021, Section 250.3, as
last amended by Section 1, Chapter 420, O.S.L. 2025 (75 O.S. Supp.
2025, Section 250.3), is amended to read as follows:

1 Section 250.3. As used in the Administrative Procedures Act:

2 1. "Administrative head" means an official or agency body
3 responsible pursuant to law for issuing final agency orders;

4 2. "Adopted" means a proposed emergency rule which has been
5 approved by the agency but has not been approved or disapproved by
6 the Governor as an emergency rule as provided by Section 253 of this
7 title, or a proposed permanent rule which has been approved by the
8 agency and not disapproved by the Governor pursuant to paragraph 6
9 of subsection A of Section 303 of this title, but has not been
10 finally approved or disapproved by the Legislature or the Governor;

11 3. "Agency" includes but is not limited to any constitutionally
12 or statutorily created state board, bureau, commission, office,
13 authority, public trust in which the state is a beneficiary, or
14 interstate commission, except:

- 15 a. the Legislature or any branch, committee or officer
16 thereof, and
17 b. the courts;

18 4. "Emergency rule" means a rule that is made pursuant to
19 Section 253 of this title;

20 5. "Final rule" or "finally adopted rule" means a rule other
21 than an emergency rule, which has not been published pursuant to
22 Section 255 of this title but is otherwise in compliance with the
23 requirements of the Administrative Procedures Act, and is:

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- 1 a. approved by a joint resolution pursuant to subsection
2 B of Section 308 of this title, provided that any such
3 resolution becomes law in accordance with Section 11
4 of Article VI of the Oklahoma Constitution, or
5 b. disapproved by a joint resolution pursuant to
6 subsection B of Section 308 of this title which has
7 been vetoed by the Governor in accordance with Section
8 11 of Article VI of the Oklahoma Constitution and the
9 veto has not been overridden;

10 6. "Final agency order" means an order that includes findings
11 of fact and conclusions of law pursuant to Section 312 of this
12 title, is dispositive of an individual proceeding unless there is a
13 request for rehearing, reopening, or reconsideration pursuant to
14 Section 317 of this title and which is subject to judicial review;

15 7. "Guidance document" means:

- 16 a. an agency statement of general applicability that is
17 not a major rule or a nonmajor rule and is designated
18 by an agency official or employee as setting forth an
19 authoritative or official policy or interpretation on
20 a statutory, regulatory, or technical issue. A
21 guidance document may include, but is not limited to,
22 a memorandum, notice, bulletin, directive, letter, or
23 no-action letter,

1 b. a federal agency statement of general applicability
2 that is designated by an agency official or employee
3 as setting forth an authoritative or official policy
4 or interpretation on a statutory, regulatory, or
5 technical issue. A guidance document may include, but
6 is not limited to, a memorandum, notice, bulletin,
7 directive, letter, or no-action letter,

8 c. the term guidance document shall be construed broadly
9 to effectuate the purpose and intent of this act and
10 includes any authoritative or official statement or
11 position, whether designated by the agency as binding
12 or nonbinding, but shall not include:

13 (1) correspondence related to agency organization,
14 procedure, or practice,

15 (2) agency adjudications decided under state or
16 federal law,

17 (3) internal correspondence not intended to have a
18 substantial future effect on the behavior of
19 regulated parties, or

20 (4) internal executive branch legal advice or legal
21 opinions addressed to executive branch officials;

22 8. "Hearing examiner" means a person meeting the qualifications
23 specified by Article II of the Administrative Procedures Act and who
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1 has been duly appointed by an agency to hold hearings and, as
2 required, render orders or proposed orders;

3 ~~8.~~ 9. "Individual proceeding" means the formal process employed
4 by an agency having jurisdiction by law to resolve issues of law or
5 fact between parties and which results in the exercise of discretion
6 of a judicial nature;

7 ~~9.~~ 10. "License" includes the whole or part of any agency
8 permit, certificate, approval, registration, charter, or similar
9 form of permission required by law;

10 11. "Major rule" means any administrative rule, whether
11 emergency or permanent in nature, that will result in or is likely
12 to result in One Million Dollars (\$1,000,000.00) or more over the
13 initial five-year period in implementation and compliance costs that
14 are reasonably expected to be incurred by or passed along to
15 businesses, state or local government units, and individuals as a
16 result of the proposed rule following the promulgation of such rule;

17 12. "Nonmajor rule" means any rule that is not a major rule;

18 ~~10.~~ 13. "Office" means the Office of the Secretary of State;

19 ~~11.~~ 14. "Order" means all or part of a formal or official
20 decision made by an agency including but not limited to final agency
21 orders;

22 ~~12.~~ 15. "Party" means a person or agency named and
23 participating, or properly seeking and entitled by law to
24 participate, in an individual proceeding;

1 ~~13.~~ 16. "Permanent rule" means a rule that is made pursuant to
2 Section 303 of this title;

3 ~~14.~~ 17. "Person" means any individual, partnership,
4 corporation, association, governmental subdivision, or public or
5 private organization of any character other than an agency;

6 ~~15.~~ 18. "Political subdivision" means a county, city,
7 incorporated town or school district within this state;

8 ~~16.~~ 19. "Promulgated" means a finally adopted rule which has
9 been filed and published in accordance with the provisions of the
10 Administrative Procedures Act, or an emergency rule or preemptive
11 rule which has been approved by the Governor;

12 ~~17.~~ 20. "Rule" means any agency statement or group of related
13 statements of general applicability and future effect that
14 implements, interprets or prescribes law or policy, or describes the
15 procedure or practice requirements of the agency. The term rule
16 includes the amendment or revocation of an effective rule but does
17 not include:

18 a. the issuance, renewal, denial, suspension or
19 revocation or other sanction of an individual specific
20 license,

21 b. the approval, disapproval or prescription of rates.
22 For purposes of this subparagraph, the term "rates"
23 shall not include fees or charges fixed by an agency
24 for services provided by that agency including but not

1 limited to fees charged for licensing, permitting,
2 inspections or publications,

3 c. statements and memoranda concerning only the internal
4 management of an agency and not affecting private
5 rights or procedures available to the public,

6 d. declaratory rulings issued pursuant to Section 307 of
7 this title,

8 e. orders by an agency, or

9 f. press releases or "agency news releases", provided
10 such releases are not for the purpose of interpreting,
11 implementing or prescribing law or agency policy;

12 ~~18.~~ 21. "Rulemaking" means the process employed by an agency
13 for the formulation of a rule;

14 ~~19.~~ 22. "Secretary" means the Secretary of State; and

15 ~~20.~~ 23. "Small business" means a for-profit enterprise
16 consisting of fifty or fewer full-time or part-time employees.

17 SECTION 3. AMENDATORY 75 O.S. 2021, Section 250.4A, is
18 amended to read as follows:

19 Section 250.4A. Any agency exempt from all or part of the
20 Administrative Procedures Act pursuant to subsection A of Section
21 250.4 of this title shall maintain and make available for public
22 inspection its exempt rules and all guidance documents at its
23 principal place of business and on any website associated with the
24 agency.

1 SECTION 4. AMENDATORY 75 O.S. 2021, Section 250.9, as
2 amended by Section 1, Chapter 7, O.S.L. 2024 (75 O.S. Supp. 2025,
3 Section 250.9), is amended to read as follows:

4 Section 250.9. A. There is hereby established an Office of
5 Administrative Rules within the Office of the Secretary of State.
6 The Office of Administrative Rules shall have the primary
7 responsibility for publishing "The Oklahoma Register" and the
8 "Oklahoma Administrative Code" and otherwise implementing the
9 provisions of Article I of the Administrative Procedures Act. The
10 Secretary of State shall provide for the adequate staffing of the
11 Office to implement the provisions of this section including but not
12 limited to an editor in chief.

13 B. The Secretary shall cause to be published in electronic
14 form, and may cause to be published in printed form, at the least
15 cost possible to the state, the "Oklahoma Administrative Code" and
16 "The Oklahoma Register". In the event of any discrepancy between
17 the electronic and printed form of the Code or "The Oklahoma
18 Register", the electronic form shall prevail unless it is
19 conclusively shown, by reference to the rulemaking filings made with
20 the Secretary, that the electronic form contains an error in
21 publication.

22 C. Every agency subject to the provisions of Article I and
23 Article II of the Administrative Procedures Act shall submit all
24 guidance documents to the Secretary on a quarterly basis, which the

1 Secretary shall cause to be published in an electronic, indexed,
2 searchable form, whether submitted electronically or not by the
3 agency.

4 1. The website shall state that guidance documents lack the
5 force and effect of law, except as authorized by law or as
6 incorporated into a contract or binding legal decision.

7 2. If a guidance document is amended or rescinded by an agency
8 or federal agency, the original guidance document shall remain on
9 the website where it has been published by the Office of
10 Administrative Rules, and, within fifteen (15) days of such
11 amendment or rescission, the agency shall submit to the Secretary a
12 notice that the document has been amended or rescinded, indicating
13 the date, the reason for the amendment or rescission, and providing
14 the amended guidance document.

15 3. This notice, within fifteen (15) days of receipt by the
16 Secretary, shall be published alongside the initial guidance
17 document.

18 SECTION 5. AMENDATORY 75 O.S. 2021, 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 all rules, guidance
8 documents and all other written statements of policy or
9 interpretations formulated, adopted, promulgated or used by the
10 agency in the discharge of its functions;

11 4. Make available for public inspection pursuant to the
12 provisions of the Open Records Act all final orders, decisions and
13 opinions.

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

18 2. The agency rulemaking record shall contain:

19 a. copies of all publications in "The Oklahoma Register"
20 with respect to the rule or the proceeding upon which
21 the rule is based,

22 b. copies of any portions of the agency's public
23 rulemaking docket containing entries relating to the
24 rule or the proceeding upon which the rule is based,

- c. all written petitions, requests, submissions, and comments received by the agency and all other written materials considered by the agency in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based,
- d. any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations,
- e. a copy of any regulatory analysis prepared for the proceeding upon which the rule is based,
- f. a copy of the rule and analysis of each such rule filed with the Office pursuant to Section 251 of this title,
- g. all petitions for exceptions to, amendments of, or repeal or suspension of, the rule,
- h. a copy of the rule impact statement, if made, and
- i. such other information concerning such rules as may be determined necessary by the agency.

3. Upon judicial review, the record required by this section constitutes the official agency rulemaking record with respect to a rule. Except as otherwise required by a provision of law, the

1 agency rulemaking record need not constitute the exclusive basis for
2 agency action on that rule or for judicial review thereof.

3 C. 1. By December 31, 2002, each agency that issues precedent-
4 setting orders shall maintain and index all such orders that the
5 agency intends to rely upon as precedent. The index and the orders
6 shall be available for public inspection and copying in the main
7 office and each regional or district office of the agency. The
8 orders shall be indexed by subject.

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

13 3. An agency shall consistently apply rules to each person
14 subject to the jurisdiction of the agency regarding issuance of
15 orders.

16 D. An agency shall not by internal policy, memorandum, or other
17 form of action not otherwise authorized by the Administrative
18 Procedures Act:

19 1. Amend, interpret, implement, or repeal a statute or a rule;

20 2. Expand upon or limit a statute or a rule; and

21 3. Except as authorized by the Constitution of the United
22 States, the Oklahoma Constitution or a statute, expand or limit a
23 right guaranteed by the Constitution of the United States, the
24 Oklahoma Constitution, a statute, or a rule.

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

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

10 SECTION 6. This act shall become effective November 1, 2026.

11 Passed the House of Representatives the 18th day of February,
12 2026.

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Presiding Officer of the House
of Representatives

Passed the Senate the ___ day of _____, 2026.

Presiding Officer of the Senate