

1 STATE OF OKLAHOMA

2 2nd Session of the 60th Legislature (2026)

3 SENATE BILL 1433

By: Bergstrom

6 AS INTRODUCED

7 An Act relating to the Administrative Procedures Act;
8 creating the Guidance Transparency Act; providing
9 short title; amending 75 O.S. 2021, Section 250.3, as
10 last amended by Section 5, Chapter 258, O.S.L. 2025
(75 O.S. Supp. 2025, Section 250.3), which relates to
11 defined terms under the Administrative Procedures
12 Act; defining term; conforming language; amending 75
13 O.S. 2021, Section 250.4a, which relates to certain
14 exemption under the Administrative Procedures Act;
15 requiring certain agencies to make guidance documents
16 available for public inspection; amending 75 O.S.
17 2021, Section 250.9, as amended by Section 1, Chapter
18 7, O.S.L. 2024 (75 O.S. Supp. 2025, Section 250.9),
19 which relates to creation of the Office of
20 Administrative Rules; requiring certain agencies to
21 electronically submit certain guidance documents on
22 certain basis; requiring publication of documents in
23 certain form; requiring documents to include certain
24 information; amending 75 O.S. 2021, Section 302,
which relates to duties of rulemaking agencies;
requiring agencies to make all guidance documents
available for public inspection; updating statutory
language; providing for noncodification; and
providing an effective date.

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

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

1 This act shall be known and may be cited as the "Guidance
2 Transparency Act".

3 SECTION 2. AMENDATORY 75 O.S. 2021, Section 250.3, as
4 last amended by Section 5, Chapter 258, O.S.L. 2025 (75 O.S. Supp.
5 2025, Section 250.3), is amended to read as follows:

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

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

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

16 3. "Agency" includes, but is not limited to, any
17 constitutionally or statutorily created state agency, board, bureau,
18 commission, office, authority, institution, public trust in which
19 the state is a beneficiary, interstate commission, or any
20 instrumentality thereof, except:

21 a. the Legislature or any branch, committee, or officer
22 thereof, and
23 b. the courts;

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

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

7 a. ~~approved by the Legislature pursuant to Section 308.3
8 of this title, provided that any such joint resolution
9 becomes law in accordance with Section 11 of Article
10 VI of the Oklahoma Constitution,~~

11 b. ~~approved by the Governor pursuant to subsection C of
12 Section 308.3 of this title,~~

13 c. approved by a joint resolution pursuant to subsection
14 B of Section 308 of this title, provided that any such
15 resolution becomes law in accordance with Section 11
16 of Article VI of the Oklahoma Constitution, or

17 d. b. ~~disapproved by a joint resolution pursuant to
18 subsection B of Section 308 of this title or Section
19 308.3 of this title, which has been vetoed by the
20 Governor in accordance with Section 11 of Article VI
21 of the Oklahoma Constitution and the veto has not been
22 overridden;~~

23 6. "Final agency order" means an order that includes findings
24 of fact and conclusions of law pursuant to Section 312 of this

1 title, is dispositive of an individual proceeding unless there is a
2 request for rehearing, reopening, or reconsideration pursuant to
3 Section 317 of this title, and which is subject to judicial review;

4 7. "Guidance document" means:

5 a. (1) an agency statement of general applicability that
6 is not a major rule or a nonmajor rule and is
7 designated by an agency official or employee as
8 setting forth an authoritative or official policy
9 or interpretation on a statutory, regulatory, or
10 technical issue. A guidance document may

11 include, but not be limited to, a memorandum,
12 notice, bulletin, directive, letter, or no-action
13 letter, or

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

23 b. The term guidance document shall be construed broadly
24 to effectuate the purpose and intent of the

1 Administrative Procedures Act and includes any
2 authoritative or official statement or position
3 whether designated by the agency as binding or
4 nonbinding but shall not include:

5 (1) correspondence related to agency organization,
6 procedure, or practice,
7 (2) agency adjudications decided under state or
8 federal law,
9 (3) internal agency correspondence not intended to
10 have a substantial future effect on the behavior
11 of regulated parties, or
12 (4) internal executive branch legal advice or legal
13 opinions addressed to executive branch officials;

14 8. “Hearing examiner” means a person meeting the qualifications
15 specified by Article II of the Administrative Procedures Act and who
16 has been duly appointed by an agency to hold hearings and, as
17 required, render orders or proposed orders;

18 8. 9. “Implementation and compliance costs” means direct costs
19 that are readily ascertainable based upon standard business
20 practices, including, but not limited to, fees, the cost to obtain a
21 license or registration, the cost of equipment required to be
22 installed or used, additional operating costs incurred, the cost of
23 monitoring and reporting, and any other costs to comply with the
24 requirements of the proposed rule;

1 9. 10. "Individual proceeding" means the formal process
2 employed by an agency having jurisdiction by law to resolve issues
3 of law or fact between parties and which results in the exercise of
4 discretion of a judicial nature;

5 10. 11. "License" includes the whole or part of any agency
6 permit, certificate, approval, registration, charter, or similar
7 form of permission required by law;

8 11. 12. "Major rule" means any administrative rule, whether
9 emergency or permanent in nature, that will result in or is likely
10 to result in One Million Dollars (\$1,000,000.00) or more over the
11 initial five-year period in implementation and compliance costs that
12 are reasonably expected to be incurred by or passed along to
13 businesses, state or local government units, and individuals as a
14 result of the proposed rule following the promulgation of such rule;

15 12. 13. "Nonmajor rule" means any rule that is not a major
16 rule;

17 13. 14. "Office" means the Office of the Secretary of State;

18 14. 15. "Order" means all or part of a formal or official
19 decision made by an agency including, but not limited to, final
20 agency orders;

21 15. 16. "Party" means a person or agency named and
22 participating, or properly seeking and entitled by law to
23 participate, in an individual proceeding;

1 16. 17. "Permanent rule" means a rule that is made pursuant to
2 Section 303 of this title;

3 17. 18. "Person" means any individual, partnership,
4 corporation, association, governmental subdivision, or public or
5 private organization of any character other than an agency;

6 18. 19. "Political subdivision" means a county, city,
7 incorporated town, or school district within this state;

8 19. 20. "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 20. 21. "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
15 the 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 limited to, fees charged for licensing, permitting, inspections, or publications,

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

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

e. orders by an agency, or

f. press releases or "agency news releases", provided

such releases are not for the purpose of interpreting, implementing, or prescribing law or agency policy;

21. 22. "Rulemaking" means the process employed by an agency

for the formulation of a rule;

22. 23. "Secretary" means the Secretary of State; and

23. 24. "Small business" means a for-profit enterprise

consisting of fifty or fewer full-time or part-time employees; and

24. "Technical legal defect" means an error that would

otherwise invalidate an action by a court of law.

SECTION 3. AMENDATORY 75 O.S. 2021, Section 250.4a, is

amended to read as follows:

Section 250.4a. Any agency exempt from all or part of the

Administrative Procedures Act pursuant to subsection A of Section

250.4 of this title shall maintain and make available for public

inspection its exempt rules and all guidance documents at its

1 principal place of business and on any website associated with the
2 agency.

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

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

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

1 C. Each agency subject to the provisions of Article I and
2 Article II of the Administrative Procedures Act shall electronically
3 submit all guidance documents to the Secretary on a quarterly basis.
4 The Secretary shall publish the guidance documents in an electronic,
5 indexed, searchable form. The published guidance documents shall
6 include the following:

7 1. A notification that the guidance documents lack the full
8 force and effect of law, except as authorized by law or as
9 incorporated into a contract or binding legal decision; and
10 2. Information regarding amendments to or rescission of
11 guidance documents by an agency or federal agency. An original
12 guidance document shall remain on the website for the Office of
13 Administrative Rules, and within fifteen days of an amendment or
14 rescission, the agency shall submit to the Secretary a notice that
15 the document has been amended or rescinded, the date of such action,
16 the reason for the amendment or rescission, and any amended guidance
17 document. The notice shall be published within fifteen (15) days of
18 receipt by the Secretary.

19 SECTION 5. AMENDATORY 75 O.S. 2021, Section 302, is
20 amended to read as follows:

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

23 1. Promulgate as a rule a description of the organization of
24 the agency, stating the general course and method of the operations

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, all 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; and

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

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

22 3. Upon judicial review, the record required by this section

23 constitutes the official agency rulemaking record with respect to a

24 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 United States Constitution ~~of~~
22 ~~the United States~~, the Oklahoma Constitution, or a statute, expand
23 or limit a right guaranteed by the United States Constitution ~~of the~~
24 ~~United States~~, the 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.

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