**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH**

**CHAPTER 2. PROCEDURES OF THE** **STATE DEPARTMENT OF HEALTH**

"Unofficial Version"

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[**Authority:** Oklahoma State Board of Health; 63 O.S., § 1-101 et seq. and 1-1950.4]

[**Source:** Codified 12-31-1991]

 **SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION**

Section

310:2-1-1. Purpose

310:2-1-2. Definitions

310:2-1-3. Organization

**310:2-1-1. Purpose**

(a) These rules implement the Admini­strative Procedures Act, 75 O.S. 1991, Section 250et seq., as amended ("APA"). These rules govern formal proceedings of the Depart­ment and may be supplemented by procedural rules within a particular departmental area. Informal proceedings may be held as announced by the Department or as agreed with any person.

(b) These rules are adopted to simplify procedure, avoid delays, save expenses, and facilitate the administration of the Public Health Code of Oklahoma and other laws assigned to the Oklahoma State Department of Health for administration. To that end, the provisions of these rules shall be given a fair and impartial construction.

[**Source:** Amended at 12 Ok Reg 2271, eff 6-26-1995; Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-1-2. Definitions**

 Unless the context otherwise requires, singular words shall be deemed to include the plural, and masculine words to include the feminine, and vice versa. The following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

 **"Administrative Law Judge"** means a person appointed by the Commissioner of Health to conduct an individual hearing under the Administrative Procedures Act and may be a employee or a private attorney with whom the Department has a contract for services.

 **"Board"** means the Oklahoma State Board of Health.

 **"Commissioner of Health"** and **"Commissioner"** mean the Oklahoma State Commissioner of Health, the chief executive officer of the Department. References in this Chapter to the Commissioner may include a designee of the Commissioner of Health. Designations shall be subject to such powers and limitations as are specified in writing.

 **"Department**" means the Oklahoma State Department of Health.

 **"Respondent"** means the person(s) or legal entity(ies) named in a petition for an individual proceeding, against whom relief is sought.

[**Source:** Amended at 12 Ok Reg 2271, eff 6-26-1995; Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-1-3. Organization**

 The Department shall be organized and divided into such departmental areas and divisions as the Board deems desirable for efficiency. Such organization and division may be revised by the Board as it finds necessary or expedient. Copies of the organizational chart are available upon request to the Office of the Commissioner.

 **SUBCHAPTER 3. GENERAL OPERATION AND PROCEDURES**

Section

310:2-3-1. Address

310:2-3-2. Office hours

310:2-3-3. Writing to the Department

310:2-3-4. Agency statements, orders and forms

310:2-3-5. Access to Agency records pursuant to the Open Records Act

310:2-3-6. Office of Administrative Hearings

310:2-3-7. Requesting individual proceedings and rulemaking [REVOKED]

**310:2-3-1. Address**

 The principal office of the Department is Suite 305, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, Oklahoma 73117-1299.

**310:2-3-2. Office hours**

 Office hours are from 8:00 a.m. to 4:30 p.m., unless otherwise designated by the Commissioner, each day except Saturday and Sunday and legal holidays established by statute or by the Governor.

**310:2-3-3. Writing to the Department**

 Unless a person is working with a particular departmental area, written communication to the Department shall be addressed to the Commissioner at the principal office.

**310:2-3-4. Agency statements, orders and forms**

 Each departmental area shall make available to the public all rules and other written statements of policy or interpretations formulated, adopted or used in the discharge of its functions; all final orders, decisions and opinions; and all forms, applications and instructions for use by the public, including those required to apply for a license or permit.

**310:2-3-5. Access to agency records pursuant to the Open Records Act**

(a) **Official records.** Official records include records required to be maintained by law, the record in individual proceedings, records submitted to the agency by any person and any other "record" as that term is defined by the Oklahoma Open Records Act, 51 O.S. § 24A.1, *et seq*.,(OORA).

(b) **Access to official records.** Every record defined by subparagraph (a) above wherein disclosure is not otherwise specifically excepted by law or the OORA is subject to inspection and mechanical reproduction under the provisions set forth below.

(c) **Initial procedural requirements.** A request for inspection may be submitted orally or in writing. To encourage fully articulated and accurate response to a request, OSDH recommends a request be submitted in a form that is susceptible to memorialization such as a writing, electronic mail or facsimile transmission, and must reasonably describe the records sought. Additionally, if applicable, every request must specify a time period for which records are being sought. A request submitted in the manner above, reasonably describing the records sought and stating an appropriate time period for the records being sought will be timely acknowledged and further processed for a review and inspection. If, consistent with the OORA, agency personnel determine that a search is necessary to gather and collect the records sought by the requester, the requester is required to pay, in advance, a search fee pursuant to subparagraph (h) below.

(d) **Requests received.** Requests submitted to the agency will not be deemed to have been received unless and until the request has been identified by agency personnel as a request properly filed in accordance with these rules. After a determination is made estimating the search time necessary to gather the records requested, the agency will remit an advice of the cost to the requester. Upon receipt of the requested search fee, the request will be deemed to have been received by the agency and will then be timely processed for inspection.

(e) **Abandonment.** Any request not confirmed by a tender of the requisite search fee within thirty (30) days of advice by the agency shall be deemed to be abandoned, unless, within the time stated, the requester can show cause why the confirmation should be delayed or postponed.

(f) **Cooperation with the agency.** If the requester fails to furnish additional information reasonably necessary to identify the records sought or otherwise enable agency personnel to accurately process the request, the processing of the subject request may be suspended by agency personnel. A request that remains suspended for a period exceeding sixty (60) days shall be deemed abandoned.

(g) **Appeal.** If the agency cannot comply with the request for disclosure, the requester shall be notified in writing of the adverse determination, stating the reason(s) therefor and advising the requestor of the right to an administrative appeal under the provisions of subparagraph 310:2-3-7.

(h) **Fees**. The following are fees for reproduction of records:

 (1) Paper Records

 (A) Regular Copy - $0.25 per page

 (B) Certified Copy - $1.00 per page

 (C) Copy Sent by Fax - $0.35 per page

 (D) Copy of Pages Larger than 8-1/2 X 14 - $0.50

per page

 (2) Audio Tapes

 (A) With Tape Provided - $5.00 per tape

 (B) Without Tape Provided - $10.00 per tape

(3) Electronic Records - Requester is required to furnish blank tape(s) if reproduction is not in a printout format, and reimburse the agency for the actual cost of the use of the central processing unit of any computer used to access data stored therein

(A) $50.00 per hour programming time

(B) $50.00 per hour for other computer time

(4) Search Fees – $25.00 per hour

**[Source:** Amended at 19 Ok Reg 523, eff 1-3-2002(emergency); Emergency lapsed on 7-14-2002; Amended at 20 Ok Reg 1180, eff 5-27-2003]

310:2-3-6. Office of Administrative Hearings

(a) Session hours. Unless otherwise ordered by the assigned administrative law judge, the morning sessions shall begin at 9:00 a.m. and close at 12:00 noon, and the afternoon sessions shall begin at 1:30 p.m. and close at 4:30 p.m.

(b) Chief Administrative Law Judge. The Chief Administrative Law Judge is the administrative officer for the Office of Administrative Hearings and shall perform all duties that the Commissioner may delegate or assign. The Chief Administrative Law Judge may assign administrative law judges to conduct individual proceedings or other hearings, or specific activities within proceedings and hearings. The Chief Administrative Law Judge shall have the discretion to issue non-dispositive orders including the scheduling of conferences and pre-hearing conferences, orders on non-dispositive motions, and orders for the conduct of the proceedings in general or in a specific proceeding.

(c) Assigned administrative law judge. The administrative law judge shall have complete authority to conduct the proceedings and may take any action not inconsistent with the provisions of the rules of this Chapter or of the APA for the maintenance of order at hearings and for the expeditious, fair, and impartial conduct of the proceedings. The assigned administrative law judge may also:

(1) arrange and issue notice of the date, time and

place of hearings and conferences;

(2) establish the methods and procedures to be used in the presentation of the evidence;

(3) hold conferences to settle, simplify, determine, or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;

(4) administer oaths and affirmations;

(5) regulate the course of the hearing and govern the conduct of participants;

(6) examine witnesses;

(7) rule on, admit, exclude and limit evidence;

(8) establish the time for filing motions, testimony, and other written evidence, briefs, findings, and other submissions, and hold the record open for such purposes;

(9) rule on motions and other pending procedural matters; and

(10) divide the hearing into stages or combine interests of parties whenever the number of parties is large or the issues are numerous and complex.

(d) **Hearing C**lerk. The Hearing Clerk is the person designated by the Commissioner to assist the Chief Administrative Law Judge and maintain the administrative hearing files and dockets within the Office of Administrative Hearings.

[**Source:** Amended at 12 Ok Reg 2271, eff 6-26-1995; Amended at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-3-7. Requesting individual proceedings and rulemaking** [REVOKED]

[**Source:** Amended at 12 Ok Reg 2271, eff 6-26-1995; Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

 **SUBCHAPTER 5. PROCEDURE IN INDIVIDUAL PROCEEDINGS** [REVOKED]

Section

310:2-5-1. Petition and notice [REVOKED]

310:2-5-2. Service [REVOKED]

310:2-5-2.1. Notice of hearing [REVOKED]

310:2-5-2.2. Service of petition and notice of hearing [REVOKED]

310:2-5-2.3. Service of other papers and documents [REVOKED]

310:2-5-3. Response [REVOKED]

310:2-5-4. Prehearing conference [REVOKED]

310:2-5-5. Continuances [REVOKED]

310:2-5-6. Subpoenas [REVOKED]

310:2-5-7. Record [REVOKED]

310:2-5-8. Order of procedure [REVOKED]

310:2-5-9. Default [REVOKED]

310:2-5-10. Order [REVOKED]

310:2-5-11. Final order [REVOKED]

310:2-5-12. Reconsideration [REVOKED]

310:2-5-13. Settlement [REVOKED]

310:2-5-14. Enforcement of final orders [REVOKED]

310:2-5-15. Hearings by Boards [REVOKED]

310:2-5-16. Emergency actions [REVOKED]

**310:2-5-1. Petition and notice** [REVOKED]

[**Source:** Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-2. Service** **[REVOKED]**

[**Source:** Amended at 12 Ok Reg 2271, eff 6-26-1995; Revoked at 16 Ok Reg 901, eff 1-5-1999 (emergency); Revoked at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-5-2.1. Notice of hearing** [REVOKED]

[**Source**: Added at 16 Ok Reg 901, effective 1-5-1999 (emergency); Added at 16 Ok Reg 1389, effective 5-27-1999; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-2.2. Service of petition and notice of hearing** [REVOKED]

[**Source:** Added at 16 Ok Reg 901, effective 1-5-1999 (emergency); Added at 16 Ok Reg 1389, effective 5-27-1999; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-2.3. Service of other papers and documents** [REVOKED]

[**Resource:** Added at 16 Ok Reg 901, effective 1-5-1999 (emergency); Added at 16 Ok Reg 1389, effective 5-27-1999; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-3. Response** [REVOKED]

[**Source:** Amended at 12 Ok Reg 2271, eff 6-26-1995; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-4. Prehearing conference** [REVOKED]

[**Source:** Amended at 12 Ok Reg 2271, eff 6-26-1995; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-5. Continuances** [REVOKED]

[**Source:** Amended 12 Ok Reg 2271, eff 6-26-1995; Amended at 16 Ok Reg 901, eff 1-5-99 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-6. Subpoenas** [REVOKED]

[**Source:** Amended at 12 Ok Reg 2271, eff 6-26-1995; Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-7. Record** [REVOKED]

[**Source:** Amended at 12 Ok Reg 2271, eff 6-26-1995; Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-8. Order of procedure** [REVOKED]

[**Source:** Amended at 12 Ok Reg 2271, eff 6-26-1995; Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-9. Default** [REVOKED]

[**Source:** Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-10. Order** [REVOKED]

[**Source:** Amended at 12 Ok Reg 2271, eff 6-26-1995; Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-11. Final Order** [REVOKED]

[**Source:** Amended at 12 Ok Reg 2271, eff 6-26-1995; Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-12. Reconsideration** [REVOKED]

[**Source:** Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-13. Settlement** [REVOKED]

[**Source:** Amended at 12 Ok Reg 2271, eff 6-26-1995; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-14. Enforcement of Final Orders** [REVOKED]

[**Source:** Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-15. Hearings by Boards** [REVOKED]

[**Source:** Added at 12 Ok Reg 2271, eff 6-26-1995; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-5-16. Emergency actions** [REVOKED]

[**Source:** Added at 16 Ok Reg 901, eff 1-5-1999 (emergency); Added at 16 Ok Reg 1389, eff 5-27-1999; Revoked at 24 Ok Reg 1896, eff 6-25-2007]

 **SUBCHAPTER 7. ADDITIONAL PROCEDURES FOR**

 **ADMINISTRATIVE PENALTY PROCEEDINGS**

 **PART 1. ENVIRONMENTAL HEALTH PENALTIES**

Section

310:2-7-1. Applicability

310:2-7-2. Notice of Violation NOV

310:2-7-3. Determining penalty

310:2-7-4. Administrative Compliance Order

310:2-7-5. Assessment Order

 **PART 3. [RESERVED]**

310:2-7-10. Applicability [RESERVED]

 **PART 1. ENVIRONMENTAL HEALTH PENALTIES**

**310:2-7-1. Applicability**

 The requirements of Part 1 of this Subchapter are in addition to the preceding requirements of this Chapter and are applicable to matters, where the Department is a party, brought under 63 O.S., 1991 Sections 1-1701.1A.

[**Source:** Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-7-2. Notice of Violation ("NOV")**

 Administrative penalty proceedings must be preceded by a written Notice of Violation (NOV) informing the Respondent of the regulatory requirement at issue, unless otherwise provided by law. This NOV must be served upon the Respondent and must state the factual allegations and particular standards or rules upon which the NOV is based. A letter, petition, consent order or final order may constitute a NOV for purposes of instituting administrative penalty proceedings, if it meets the requirements of this paragraph.

[**Resource:** Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-7-3. Determining penalty**

(a) **In general.** The following factors may be considered in determining the amount of penalty specified in an Administrative Compliance Order:

 (1) the value of efforts to comply with the regulations cited in the notice of violation;

 (2) the economic benefit to the violator of noncompliance with the regulations in question; and

 (3) an additional amount for deterrence purposes, based upon

 (A) the likelihood of the development of adverse health effects caused by the violation,

 (B) the severity of environmental degradation or public health effects caused or placed at risk by the violation,

 (C) the degree of variance from the applicable standards,

 (D) costs of correction of damage, and

 (E) bad faith of the Respondent.

(b) **Small businesses.** If the violator is a "small business" as defined in 75 O.S. § 502, or is a for-profit enterprise consisting of fifty or fewer full-time or part-time employees, the following additional factors may be considered in determining the amount of penalty specified in an Administrative Compliance Order, and whether the penalty should be reduced or waived altogether:

(1) the small business corrects the violation within thirty (30) days or less after receipt of a notice of violation or citation; or

(2) the violation was the result of an excusable misunderstanding of the Department’s interpretation of a rule.

**[Source:** Amended at 20 Ok Reg 88, eff 10-29-2002 (emergency); Amended at 20 Ok Reg 1180, eff 5-27-2003]

**310:2-7-4. Administrative Compliance Order**

(a) **When issued**. Fifteen days or more after service of any required NOV upon the Respondent, or such reduced period as the Petitioner believes necessary to render the order reasonably effectual, the Commissioner of Health or Deputy Commissioner may issue an Administrative Compliance Order requiring compliance and specifying penalties for non­compliance. The entry of an Administrative Compliance Order initiates an individual proceeding under this Subchapter and shall meet the requirements of a petition as stated above**.**

(b) **Must specify**.The Administrative Compliance Order shall specify the facts and conclusions upon which it is based and shall set a time for the Respondent to comply with the applicable regulations. The Administrative Compliance Order shall specify the penalty, not to exceed the statutory maximum per day of non­compliance, to be assessed in the event that the Respondent fails to comply with the Order within the prescribed time.

(c) **Service**.The Administrative Compliance Order shall be served in accordance with Subchapter 5. The Order shall advise the Respondent that it shall become final unless a hearing is requested within 15 days of service of the Order. If a hearing is requested, proceedings shall promptly commence**.**

(d) **Hearing.** Based on the hearing, the Administrative Compliance Order will be sustained, modified, or dismissed. If the hearing process extends beyond any compliance deadline specified in the Administrative Compliance Order, fines specified in the Order for violations of the Order will continue to accrue during the hearing process unless the Hearing Officer stays the penalty upon request for good cause shown**.**

[**Source:** Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-7-5. Assessment Order**

(a) **Failure to comply with Administrative Compliance Order**. After the Administrative Compliance Order is issued, proceedings may be conducted to determine whether the Respondent has failed to comply with the Order.

(b) **Application for compliance and penalty hearing**.Any time the Petitioner believes the Administrative Compliance Order has been violated, it may with reasonable promptness apply to the Hearing Officer for a compliance and penalty hearing, alleging the period of noncompliance and the amount of the administrative fine that has accrued. The Petitioner shall provide a copy of the request to the Respondent.

(c) **Elements to consider**. The Commissioner, in deciding whether the Administrative Compliance Order has been violated and whether the penalties are appropriate, may consider efforts to comply with applicable requirements made by the Respondent after issuance of the Administrative Compliance Order.

(d) **Must request hearing within 7 days**. The Petitioner's application shall advise the Respondent that the Respondent's right to contest the determination of noncompliance and the amount of the fine is waived if the request for hearing is not made within seven calendar days of receiving notice. A request for hearing is deemed made when received by the Department. If timely requested, the hearing must be promptly set and held.

(e) **Issuance of Assessment Order**. An Assessment Order shall be issued by the Commissioner of Health or a designated Deputy Commissioner following the determination of the application. The Assessment Order must state the nature and period of the violation, and determine the amount of the fine. The fine is due and payable immediately upon issuance of the Assessment Order, unless otherwise provided therein. A copy of the Assessment Order will be provided to the Respondent.

(f) **Continuing violations**. If the Petitioner believes that violations of the Administrative Compliance Order continue after the issuance of an Assessment Order, the Petitioner may apply within a reasonable time for the issuance of additional Assessment Orders covering periods of violation since the period covered by the issuance of a previous Assessment Order.

[**Source:** Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999]

 **PART 3. [RESERVED]**

310:2-7-10. Applicability (Reserved)

 **SUBCHAPTER 9. ADDITIONAL PROCEDURES FOR SOLID AND**

 **HAZARDOUS WASTE PERMITTING MEETINGS AND HEARINGS** [REVOKED]

 **PART 1. PUBLIC MEETINGS** [REVOKED]

Section

310:2-9-1. Public meetings [REVOKED]

 **PART 3. ADMINISTRATIVE PERMIT HEARINGS** [REVOKED]

310:2-9-25. General provisions [REVOKED]

310:2-9-26. Definitions [REVOKED]

310:2-9-27. Request for hearing [REVOKED]

310:2-9-28. Hearing Officer [REVOKED]

310:2-9-29. Prehearing conferences [REVOKED]

310:2-9-30. Prehearing verification conference [REVOKED]

310:2-9-31. Selection of Lead Counsel [REVOKED]

310:2-9-32. Identification of issues [REVOKED]

310:2-9-33. Continuances [REVOKED]

310:2-9-34. Subpoenas [REVOKED]

310:2-9-35. Administrative Record [REVOKED]

310:2-9-36. Prehearing scheduling conference [REVOKED]

310:2-9-37. Discovery [REVOKED]

310:2-9-38. Prehearing determination conference [REVOKED]

310:2-9-39. Prehearing order [REVOKED]

310:2-9-40. Final prehearing conference [REVOKED]

310:2-9-41. Settlement conference [REVOKED]

310:2-9-42. Withdrawal and dismissal [REVOKED]

310:2-9-43. Motions [REVOKED]

310:2-9-44. Rulings as final orders [REVOKED]

310:2-9-45. Hearings [REVOKED]

310:2-9-46. Orders [REVOKED]

310:2-9-47. Issuance of permit [REVOKED]

 **PART 1. PUBLIC MEETINGS** [REVOKED]

**310:2-9-1. Public meetings** [REVOKED]

[**Source:** Revoked at 12 Ok Reg 2271, eff 6-26-1995]

 **PART 3. ADMINISTRATIVE PERMIT HEARINGS** [REVOKED]

**310:2-9-25 through 310:2-9-47** [REVOKED]

[**Source:** Revoked at 12 Ok Reg 2271, eff 6-26-1995]

 **SUBCHAPTER 11. ENVIRONMENTAL LICENSE PROCESSING TIMES**

Section

310:2-11-1. Purpose and applicability

310:2-11-2. Definitions

310:2-11-3. Application submittal

310:2-11-4. Common procedures

310:2-11-5. Pending failures

310:2-11-10. Air Quality permits [REVOKED]

310:2-11-11. Consumer Protection permits [REVOKED]

310:2-11-12. Hazardous Waste permits [REVOKED]

310:2-11-13. Occupational Licensing [REVOKED]

310:2-11-14. Solid Waste permits [REVOKED]

310:2-11-15. Water Quality permits [REVOKED]

310:2-11-16. Other permits [REVOKED]

**310:2-11-1. Purpose and applicability**

(a) **Purpose.** The rules in this Subchapter are intended to establish time periods for issuance or denial of licenses that are required by law for submittals made after the effective date of this Subchapter.

(b) **Licenses included**. The provisions of this Subchapter apply to licenses reviewed by the Consumer Protection Service or the Occupational Licensing Service and their successors.

(c) **Supersedes inconsistent rules**. Except as otherwise provided by statute, the provisions of this Subchapter shall supersede any inconsistent provision of other Chapters of this Title.

[**Source:** Added at 10 Ok Reg 95, eff 10-13-1992 (emergency); Added at 10 Ok Reg 1721, eff 7-1-1993; Amended at 12 Ok Reg 2271, eff 6-26-1995; Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-11-2. Definitions**

 The following words or terms, when used in this Subchapter shall have the following meanings, unless the context clearly indicates otherwise:

 **"Administratively complete"** means an application that contains the information specified in the application form and rules in sufficient detail to allow the Department to begin technical review.

 **"Application**"means a document prepared in accordance with the rules and the forms and instructions provided by the Environmental Health Service and submitted with the expectation of providing that information necessary for review and determination of the permit. The application consists of the initial submittal and all supplements.

 **"Division"** means those portions of the Department that are specified in Section 310:2-11-1 and which are part of the Environmental Health Service.

 **"Submittal**"means each separately submitted document or document package that forms a part of an application.

 **"Supplement**" means a response to a request for additional information following completeness and technical reviews, and information submitted voluntarily by the applicant.

[**Source:** Added at 10 Ok Reg 95, eff 10-13-1992 (emergency); Added at 10 Ok Reg 1721, eff 7-1-1993; Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-11-3. Application submittal**

(a) **Application forms**. Each Division shall make available to the public, for each type of environmental permit required, a detailed, comprehensive permit application package, including rules, forms, checklists, instructions and guidance.

(b) **Filing**. Applications and submittals shall be filed with the respective Division.

(c) **Format**. Each submittal must be separately fastened, labeled and tabbed, including maps and drawings, so required information can be easily found and to clearly preserve the chronology.

[**Source:** Added at 10 Ok Reg 95, eff 10-13-1992 (emergency); Added at 10 Ok Reg 1721, eff 7-1-1993; Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-11-4. Common procedures**

(a) **Filing of applications**. Unless otherwise provided in this Subchapter, upon the receipt of an application and the proper fee, each Division shall:

 (1) file-stamp the application with the date of receipt, the Division name and the application number; and

 (2) assign each application to a named person who will do the review. This information shall be timely logged.

(b) **Administrative completeness review**. Unless otherwise provided in this Subchapter, the reviewer shall have 60 calendar days in which to initially determine if the filed application is administratively complete.

 (1) **Not complete**. Upon determining that the application is not administratively complete, the reviewer shall immediately notify the applicant by mail and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notifi­cation shall not require or preclude further review of the application and further requests for specific information. If the reviewer fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period.

 (2) **Complete**. Upon a determination that the application is administratively complete, the reviewer shall log the date and immediately notify the applicant by mail. The period for technical review begins.

(c) **Technical review.** Each Division involved shall have thirty (30) days from the date a completed application is filed to review each application for technical compliance with the relevant regulations and reach a final determination.

(d) **When times are tolled**. The time period for technical review is tolled (the clock stops) during litigation, during public review (public meetings or hearings, administrative hearings, public comment periods, and review by other federal or State agencies) or when the Division has asked for supplemental information and advised the applicant that the time period is tolled pending receipt.

(e) **Supplements.** To make up for time lost in reviewing inadequate materials, a request for supplemental information may specify that up to 30 additional calendar days may be added to the deadline for technical review, unless the request for supplemental information is a second or later request that identifies new deficiencies not previously identified.

(f) **Delays.** Failure by an applicant to supplement an application within 180 days after the request shall be deemed to be withdrawn unless the time is extended by agreement for good cause.

(g) **Extensions**. Extensions may be made as provided by law.

[**Source:** Added at 10 Ok Reg 95, eff 10-13-1992 (emergency); Added at 10 Ok Reg 1721, eff 7-1-1993; Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-11-5. Pending failures**

(a) **Circumstances outside agency control.** Technical review times shall be tolled for specified times when, prior to the deadline, the Commissioner certifies that a failure to meet a deadline is imminent and is caused by circumstances outside the control of the Department. Such circumstances include, but are not limited to, acts of God, a substantial and unexpected increase in the number of applications filed, and additional review duties imposed on the Department from an outside source.

(b) **Other circumstances.** Where circumstances which are not clearly outside the control of the Department may cause a failure to meet a deadline, then:

 (1) At least thirty (30) calendar days prior to the deadline the Department shall reassign staff and/or retain outside consultants to meet such deadline.

 (2) The Applicant may agree to an extension of time for a specific purpose and period of time with a refund of the entire application fee, unless a refund is prohibited by law.

[**Source:** Added at 10 Ok Reg 95, eff 10-13-1992 (emergency); Added at 10 Ok Reg 1721, eff 7-1-1993; Amended at 16 Ok Reg 901, eff 1-5-1999 (emergency); Amended at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-11-10. Air Quality permits** [REVOKED]

[**Source:** Added at 10 Ok Reg 95, eff 10-13-1992 (emergency); Added at 10 Ok Reg 1721, eff 7-1-1993; Revoked at 12 Ok Reg 2271, eff 6-26-1995]

**310:2-11-11. Consumer Protection permits** [REVOKED]

[**Source:** Added at 10 Ok Reg 95, eff 10-13-1992 (emergency); Added at 10 Ok Reg 1721, eff 7-1-1993; Revoked at 16 Ok Reg 901, eff 1-5-1999 (emergency); Revoked at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-11-12. Hazardous Waste permits** [REVOKED]

[**Source:** Added at 10 Ok Reg 95, eff 10-13-1992 (emergency); Added at 10 Ok Reg 1721, eff 7-1-1993; Revoked at 12 Ok Reg 2271, eff 6-26-1995]

**310:2-11-13. Occupational Licensing** [REVOKED]

[**Source:** Added at 10 Ok Reg 95, eff 10-13-1992 (emergency); Added at 10 Ok Reg 1721, eff 7-1-1993; Revoked at 16 Ok Reg 901, eff 1-5-1999 (emergency; Revoked at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-11-14. Solid Waste permits** [REVOKED]

[**Source:** Added at 10 Ok Reg 95, eff 10-13-1992 (emergency); Added at 10 Ok Reg 1721, eff 7-1-1993; Revoked at 12 Ok Reg 2271, eff 6-26-1995]

**310:2-11-15. Water Quality permits** [REVOKED]

[**Source:** Added at 10 Ok Reg 95, eff 10-13-1992 (emergency); Added at 10 Ok Reg 1721, eff 7-1-1993; Revoked at 12 Ok Reg 2271, eff 6-26-1995]

**310:2-11-16. Other permits** [REVOKED]

[**Source:** Added at 10 Ok Reg 95, eff 10-13-1992 (emergency); Added at 10 Ok Reg 1721, eff 7-1-1993; Revoked at 16 Ok Reg 901, eff 1-5-1999 (emergency); Revoked at 16 Ok Reg 1389, eff 5-27-1999]

 **SUBCHAPTER 13. POLLUTION COMPLAINT PROCESSING**

Section

310:2-13-1. Purpose [REVOKED]

310:2-13-2. Definitions [REVOKED]

310:2-13-3. Referral to environmental agency with

 jurisdiction [REVOKED]

310:2-13-4. Notification to complainant [REVOKED]

**310:2-13-1. Purpose** [REVOKED]

[**Source:** Added at 10 Ok Reg 1721, eff 7-1-1993; Revoked at 16 Ok Reg 901, eff 1-5-1999 (emergency); Revoked at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-13-2. Definitions** [REVOKED]

[**Source:** Added at 10 Ok Reg 1721, eff 7-1-1993; Revoked at 16 Ok Reg 901, eff 1-5-1999 (emergency); Revoked at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-13-3. Referral to environmental agency with jurisdiction** [REVOKED]

[**Source:** Added at 10 Ok Reg 1721, eff 7-1-1993; Revoked at 16, Ok 901, eff 1-5-1999 (emergency); Revoked at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-13-4. Notification to complainant** [REVOKED]

[**Source:** Added at 10 Ok Reg 1721, eff 7-1-1993; Revoked at 16 Ok Reg 901, eff 1-5-1999 (emergency); Revoked at 16 Ok Reg 1389, eff 5-27-1999]

 **SUBCHAPTER 15. APPLICATION FORMS**

Section

310:2-15-1. Required descriptions of forms

310:2-15-2. Uniform application for credentialing of providers

310:2-15-3. Uniform employment application for nurse aide staff

**310:2-15-1. Required descriptions of forms**

 The descriptions of application forms in OAC 310:002-15 are presented to comply with the Oklahoma Administrative Procedures Act, Title 75 O.S. Supp. 1997, Section 302.

[**Source:** Added at 16 Ok Reg 901, eff 1-5-1999 (emergency); Added at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-15-2. Uniform application for credentialing of providers**

(a) The application described in OAC 310:002-15-2(b) is intended for use pursuant to Title 63 O.S. Supp. 1998, Section 1-106.2.

(b) The uniform application for credentialing of providers requests the following:

 (1) personal information;

 (2) education, including medical, dental and professional schools;

 (3) training, including internships, residencies, fellowships and preceptorships;

 (4) professional licenses;

 (5) certifications and registrations;

 (6) academic appointments;

 (7) health care affiliations;

 (8) other professional work history;

 (9) current professional practice;

 (10) office billing information;

 (11) attestation;

 (12) copies of required documents; and

 (13) any additional information needed to answer all questions fully.

[**Source:** Added at 16 Ok Reg 901, eff 1-5-1999 (emergency); Added at 16 Ok Reg 1389, eff 5-27-1999; Amended at 17 Ok Reg 687, eff 12-16-1999 (emergency); Amended at 17 Ok Reg 2034, eff 6-12-2000]

**310:2-15-3. Uniform Employment Application for Nurse Aide Staff**

(a) The application described in OAC 310:2-15-3 is required for use pursuant to Title 63 O.S. Section 1-1950.4.

(b) The uniform employment application shall *be used in the hiring of nurse aide staff by a nursing facility or a specialized facility as such terms are defined in the Nursing Home Care Act, a residential care home, as such term is defined by the Residential Care Act, an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act, a continuum of care facility as defined by the Continuum of Care and Assisted Living Act, a freestanding hospice or program providing hospice services as such terms are defined by the Hospice Licensing Act, an adult day care center as such term is defined by the Adult Day Care Act, and a home care agency as defined by the Home Care Act. Such uniform application shall be used as the only application for employment of nurse aides in such facilities on and after January 1, 2001.* [63:1-1950.4]

(c) The uniform employment application for nurse aide staff requires the following:

(1) personal information;

(2) employment desired;

(3) U.S. military record;

(4) prior work history;

(5) educational background;

(6) certification;

(7) references;

(8) background information;

(9) applicant’s employment application certification and agreement;

(10)

(11) previous certified nurse aide training;

(12) applicant's signature certifying no previous conviction and authorizing criminal history record checks; and

(13) Any additional information needed to answer all questions fully.

[**Source:** Added at 18 Ok Reg 646, eff 1-10-2001 (emergency); Added at 18 Ok Reg 2026, eff 6-11-2001; Amended at 24 Ok Reg 1896, eff 6-25-2007]

**SUBCHAPTER 17. LOCAL PUBLIC HEALTH ENHANCEMENT GRANTS**

Section

310:2-17-1. Purpose

310:2-17-2. Definitions

310:2-17-3. Contingency

310:2-17-4. Eligibility for grant program

310:2-17-5. Grant description

310:2-17-6. Grant program announcements

310:2-17-7. Grant program guidelines

310:2-17-8. Grant limitations

310:2-17-9. Application evaluation process

310:2-17-10. Approval of grants

310:2-17-11. Grant program administration

**310:2-17-1. Purpose**

 The rules of this Subchapter have been adopted for administering various grant programs for public health projects in Oklahoma. The rules describe the procedures that will be used to administer various local public health grant programs designed to improve the public health in Oklahoma’s communities and rural areas. These rules are intended to be in full compliance with the Administrative Procedures Act and subsequent guidance related to funding of local projects.

[**Source:** Added at 16 Ok Reg 901, eff 1-5-1999 (emergency); Added at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-17-2. Definitions**

 The following words or terms used in this Subchapter shall have the meaning described below unless the context clearly indicates otherwise:

 **"Commissioner"** means the head of the Oklahoma State Department of Health.

 **"Department"** means the Oklahoma State Department of Health.

 **"Deputy Commissioner"** means the head of a Division of the Oklahoma State Department of Health

 **"Local project"** means the purpose for which an applicant requests funds under this grant program and does not cover any expenditure of funds through the competitive bidding process.

 **"Review Committee"** means a committee established for the purpose of assisting with the grant application review process.

[**Source:** Added at 16 Ok Reg 901, eff 1-5-1999 (emergency); Added at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-17-3. Contingency**

 Implementation of a grant program is contingent upon funding being made available to the Department for this purpose.

[**Source:** Added at 16 Ok Reg 901, eff 1-5-1999 (emergency); Added at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-17-4. Eligibility for grant program**

 Applicants eligible for grants will be defined in the program guidelines and may include substate planning districts, non-profit organizations, educational institutions, local governments or other recognized political subdivisions, or others as appropriate and which exhibit a specific need related to the defined grant purpose. If federal grant funds are involved, applicants and grantees must agree to abide by all applicable federal requirements.

[**Source:** Added at 16 Ok Reg 901, eff 1-5-1999 (emergency); Added at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-17-5. Grant description**

 Grant funding may or may not require a local match. Matching requirements will be determined by the Department and will be prescribed in the program guidelines. In-kind matching may be accepted as a portion of the local match as described in the program guidelines. Grants which require a local match may be a reimbursement type grant where grantees make project expenditures, submit claims and receive reimbursement of the specified percentage of documented expenses up to the approved grant amount.

[**Source:** Added at 16 Ok Reg 901, eff 1-5-1999 (emergency); Added at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-17-6. Grant program announcements**

(a) **Applicant notification**. The Department will notify potential applicants through direct mailings, news releases, personal contact and other appropriate means.

(b) **Announcement in *Oklahoma Register***. A program announcement will be published in the *Oklahoma Register* in accordance with the Executive Order 95-26.

[**Source:** Added at 16 Ok Reg 901, eff 1-5-1999 (emergency); Added at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-17-7. Grant program guidelines**

(a) **Program guidelines and application forms**. The Department will develop specific guidelines and application forms pertinent to the grant funding available and provide this information to potential applicants.

(b) **Application procedure**. Applicants will complete the application for funding according to the program guidelines and send completed applications to the Department's contact person as specified in the program guidelines.

(c) **Application deadline**. The application deadline will be established by the Department and published in the *Oklahoma Register* and program guidelines.

[**Source:** Added at 16 Ok Reg 901, eff 1-5-1999 (emergency); Added at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-17-8. Grant limitations**

(a) **Funding range**. The funding range or limit for each application will be established by the Department and announced in the program guidelines. Partial funding of large projects may be considered.

(b) **Allowable expenses**. Allowable project expenses will generally include materials costs, worker salaries and other specific expenses as defined in the program guidelines or not prohibited by appropriate federal or state circulars or other provisions. In-kind service expenses may be allowable. Proper documentation of each expense is required, including paid invoices, canceled checks, payroll receipts, time records and other pertinent proof of expenditures.

(c) **Restrictions**. Grant funds must not replace currently funded projects and projects must occur in Oklahoma.

[**Source:** Added at 16 Ok Reg 901, eff 1-5-1999 (emergency); Added at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-17-9. Application evaluation process**

(a) **Review and evaluation of applications**. Applications will be evaluated and ranked by a Review Committee established by the Department, Commissioner or Deputy Commissioner as appropriate to the funding source. The standard of review and selection of projects will be based upon the overall merit of the project as compared to other applications received. Applications with the highest evaluations will be recommended for funding to the extent of funds available.

(b) **Application evaluation criteria**. In anticipation of receiving applications for funding greater than the funds available, evaluation criteria will be used to rank the applications. These criteria will be developed by the Department, Commissioner, Deputy Commissioner and Review Committee and will be pertinent to the defined purpose of the grant funding.

[**Source:** Added at 16 Ok Reg 901, eff 1-5-1999 (emergency); Added at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-17-10. Approval of grants**

(a) **Review Committee recommendation**. The Review Committee will recommend the final list of applicants to the Deputy Commissioner for funding consideration.

(b) **Commissioner approval**. The Deputy Commissioner will submit the final list of grantees and recommended amounts to the Commissioner for consideration. The Commissioner will review the recommendations of the review Committee and make the final decision on grant approvals and amounts within the limits of funding available.

[**Source:** Added at 16 Ok Reg 901, eff 1-5-1999 (emergency); Added at 16 Ok Reg 1389, eff 5-27-1999]

**310:2-17-11. Grant program administration**

(a) **Grant certification forms**. Upon approval, the Deputy Commissioner will distribute to all approved grantees the forms requiring grantee signature to certify the grant.

(b) **Grant award date**. The grant award date is the date the final purchase order is dated and filed. The Deputy Commissioner shall send each approved grantee a copy of the purchase order, which shall constitute official notification of grant approval. For reimbursement grants, expenditures made prior to the grant award date will not be considered for reimbursement.

(c) **Claims**. On reimbursement grants, grantees shall abide by standard state practices and program guidelines when submitting claims. Only documented expenses will be eligible for reimbursement and no advance payments will be made. On other types of grants, claim procedures will be specified in the program guidelines.

(d) **Grant cutoff date**. Where appropriate, the Deputy Commissioner will establish the grant cutoff date when project expenditures must be completed.

(e) **Re-award of unclaimed funds**. The Department may re-award unclaimed grant funds to applications on file.

(f) **Cancellation of grants**. Grants may be canceled by the Department in the event of noncompliance or lack of progress by the grantee. Before canceling a grant, the Department will give the grantee thirty (30) days written notice and request information as to why the grant should not be canceled.

(g) **Record-keeping**. Grantees shall keep records related to the project for a period of at least three years. On request, grantees shall make these records available to the Department during this period, or until all audits are complete. Each grantee shall send the Deputy Commissioner a copy of any audit report which makes specific reference to the funded project.

(h) **Compliance audits**. The Department may audit completed grants funded under this program as appropriate.

[**Source:** Added at 16 Ok Reg 901, eff 1-5-1999 (emergency); Added at 16 Ok Reg 1389, eff 5-27-1999]

**SUBCHAPTER 19. PROCEDURES FOR DETERMINING AGENCY COST ALLOCATION TO THE CONSTRUCTION INDUSTRIES BOARD**

Section

310:2-19-1. Purpose and authority

310:2-19-2. Definitions

310:2-19-3. Procedures and methods

310:2-19-4. Dissemination of the adjusted and indirect cost agreements

**310:2-19-1. Purpose and authority**

 The purpose of this chapter is to establish the procedures or methods used by the department to determine the annual allocation of administrative costs to the Construction Industries Board. Authority and obligation to establish such procedures is set forth in Chapter 426 of the 2001 Oklahoma Sessions Laws.

**[Source:** Added at 19 Ok Reg 2041, eff 6-27-2002]

**310:2-19-2. Definitions**

 The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

 **"Adjusted indirect cost agreement"** means the agreement negotiated and reached with the Construction Industries Board utilizing the indirect cost agreement and adjusting or reducing it to reflect only those administrative cost centers that provide direct or identifiable benefits to the Construction Industries Board.

 **"Administrative cost centers"** means those cost centers within the Department which provide services to each and every Department programs, whether in whole or in part.

 **"Cognizant agency"** means the federal agency from which the Department receives the greatest majority of its federal funding.

 **"Commissioner of Health"** and "**Commissioner"** mean the Oklahoma State Commissioner of Health, the chief executive officer of the Department. References in this subchapter to the Commissioner may include a designee of the Commissioner of Health. Designations shall be subject to such powers and limitations as are specified in writing.

 **"Construction Industries Board"** means the Board having oversight over the Plumbing, Mechanical, Electrical and Inspector’s Licensure programs and the power to enforce the provisions of the Plumbing License Law of 1955, the Oklahoma Inspectors Act, the Electrical License Act, and the Mechanical License Act.

 **"Department"** means the Oklahoma State Department of Health.

 **"Indirect cost negotiation"** means the process undertaken by the Department each fiscal period to obtain an approved overhead (indirect cost) rate through cooperation with the cognizant agency.

 **"Indirect cost agreement"** means the agreement negotiated and reached with that federal agency from which the Department receives the greatest majority of its federal funding, defining and setting the overhead rate the department will utilize in the upcoming fiscal period in allocating the department’s administrative expenses to programs administered by the Department.

 **"Revolving Fund"** means the Plumbing Licensing Revolving Fund, the Electrical Revolving Fund, the Mechanical Licensing Revolving Fund, and/or the Oklahoma Inspectors Revolving Fund.

 **"Selected administrative cost centers"** means those administrative cost centers within the Department whose services the Commissioner determines provides direct or identifiable benefits to the Construction Industries Board, including but not limited to, the Commissioner’s Office, the Deputy (Director) of Administration, Financial Management, Procurement, Budget, Internal Services, Shipping & Receiving, Human Resources, Legal, Audit, Investigations, Communications and Minority Health.

**[Source:** Added at 19 Ok Reg 2041, eff 6-27-2002]

**310:2-19-3. Procedures and methods**

**General.** On or before April 15 of each year the Department shall, after conferring in good faith with the Construction Industries Board, enter into an agreement for the purpose of determining the portion of the Agency’s total indirect costs to be allocated to the Construction Industries Board. In determining allocated indirect costs the Department must utilize that method of the two (2) methods set forth below that produces the least overall cost allocation to the Construction Industries Board.

(1) **Adjusted indirect cost agreement allocation method.**

The Department’s most current approved indirect cost agreement or rate is adjusted/reduced by removing those cost centers not included within the selected administrative cost centers, to create the adjusted indirect cost agreement. The resulting adjusted indirect cost agreement represents an adjusted overhead rate that shall be applied to the overall salary costs of the Construction Industries Board, by revolving fund, to arrive at the allocation of Department administrative costs to the particular revolving fund(s).

(2) **Direct allocation of actual administrative cost method.**

The sum of the indirect costs incurred in the most recently completed fiscal year by a given cost center (i.e. each component or cost center within the selected administrative cost centers) is divided by that basis (e.g. total number of employees (FTEs) employed by the agency, total payroll of the agency, total number of discreet tasks performed, etc.) selected by the Commissioner as the most current and appropriate reflection of the average level of present service utilization of the given cost center by the Construction Industries Board, thereby deriving a unit cost for the services provided by the given cost center. The unit cost is then multiplied by the number of basis units applicable to the Construction Industries Board thereby deriving the aggregate indirect cost allocable to the Construction Industries Board for the given cost center. Each aggregate indirect cost allocation that is determined for each cost center identified as a component of the selected administrative cost centers is then totaled to yield the entire indirect cost allocation to be allocated by the Department to the Construction Industries Board and fixed, thereby, as the total indirect cost to be charged by the Department for the impending fiscal year. Additionally, any indirect cost item within a selected administrative cost center, specifically identifiable as a service or service component that is delivered or provided directly to the Construction Industries Board, shall be added to the annual fixed indirect cost charged by the Department and allocated to the Construction Industries Board within ninety (90) days of incurrence or identification.

**[Source:** Added at 19 Ok Reg 2041, eff 6-27-2002]

**310:2-19-4. Dissemination of the adjusted and indirect cost agreements**

 The adjusted indirect cost agreement and the indirect cost agreement, together with any supporting documentation and evidence of how the indirect cost rate is reduced annually, shall be maintained within the Financial Management Service of the Department. A copy of the adjusted and indirect cost agreements and supporting documentation shall be provided upon request.

**[Source:** Added at 19 Ok Reg 2041, eff 6-27-2002]

Subchapter 21. Rules of procedure governing individual proceedings

310:2-21-1. Purpose and scope of Rules

310:2-21-2. Initiating an individual proceeding

310:2-21-3. Notice of Hearings

310:2-21-4. Service of instruments initiating an administrative proceeding

310:2-21-5. Service of other papers and documents

310:2-21-6. Responsive pleadings

310:2-21-7. Appearance of parties

310:2-21-8. Ex parte communications

310:2-21-9. Initial scheduling conference

310:2-21-10. Pre-hearing procedure

310:2-21-11. Continuances

310:2-21-12. Subpoenas

310:2-21-13. Record

310:2-21-14. Hearings open to the public

310:2-21-15. Hearing procedure

310:2-21-16. Signatures upon documents filed or submitted

310:2-21-17. Motions, applications and other written submissions

310:2-21-18. Default

310:2-21-19. Final Order

310:2-21-20. Proposed Final Orders

310:2-21-21. Reconsideration

310:2-21-22. Settlement agreements and consent orders

310:2-21-23. Emergency actions

310:2-21-24. Sanctions for noncompliance

310:2-21-25. Time

310:2-21-26. Protective orders

310:2-21-27. Filing by electronic means

310:2-21-28. Video-teleconference hearings

310:2-21-29. Reconsideration of long-standing interpretations by the Department and final orders

310:2-21-30. Requirements of parties filing petitions for judicial review

310:2-21-31. Summary adjudication and resolution

310:2-21-1. **Purpose and scope of Rules**

 These rules are promulgated to provide due process to parties appearing before the Department and are not to be construed inconsistently with the Oklahoma Administrative Procedures Act. The assigned administrative law judge has the discretion to waive, supplement or modify any requirement of the applicable law or rule of procedure where permitted by law and when the administration of justice requires.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-2. **Initiating an individual proceeding**

(a) **In general**. Individual proceedings may be initiated before the Department by filing with the Office of Administrative Hearings a Petition, administrative order executed by the Commissioner or his designee, or other instrument which seeks any relief authorized by law to be granted by the Department.

(b) **Proceedings initiated by Petition**. *Each Petition shall name the Respondent and include a statement of the legal authority and jurisdiction under which the proceeding is to be held, a reference to the particular sections of the statutes and rules involved, a short and plain statement of the matters asserted giving a right to relief, the relief requested, and, unless provided in a separate written Notice of Hearing, the time, place and nature of the hearing. If the Department is unable to give a short and plain statement of the matters asserted at the time the notice is served, the initial notice may be limited to a statement of the issues involved.* [75 O.S. § 309]

(c) **Proceedings initiated by an administrative order**. Proceedings initiated by an administrative compliance order issued pursuant to 63 O.S. § 1-1701.1(A) must satisfy the requirements of that statue, the APA and this Chapter. If Section 1-1701.1(A) conflicts with provisions of the APA or this Chapter then Section 1-1701.1(A) shall control. Proceedings initiated by any other administrative order must comply with the APA and this Chapter.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

 310:2-21-3. Notice of Hearings

 The Commissioner, the Chief Administrative Law Judge or the assigned administrative law judge shall schedule the date, time and place of any hearing in accordance with these rules. The Hearing Clerk shall notify the parties. The initial hearing shall be scheduled at least thirty (30) days after the date of service of the petition. The parties may agree to an earlier date. If a specific law requires a hearing in fewer days, that statute shall be followed. If an emergency exists, a hearing may be conducted without the filing of a petition and without prior notice to the Respondent. When such emergency hearing is held the Respondent shall be afforded a hearing within ten (10) days of the issuance of an emergency order to contest such an order.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-4. Service of instruments initiating an administrative proceeding

Any instruments initiating an administrative proceeding shall be served upon every named Respondent in accordance with the provisions of 12 O.S. § 2004(C)(1)(c). A person designated by the Commissioner may be used to accomplish service for the Department. Service of the instrument initiating an administrative proceeding may be made by certified mail, return receipt requested, restricted delivery. The person serving the instrument initiating an administrative proceeding shall file proof of service with the Hearing Clerk within twenty (20) days of service or before the date of the first hearing, whichever is sooner. Acknowledgement in writing by the Respondent or appearing at the hearing without objection to service is equivalent to service.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-5. Service of other papers and documents

 Service of all other documents and papers connected with an individual proceeding shall be served on the parties or their counsel by delivering a copy or mailing a copy by first class mail, postage prepaid.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-6. Responsive pleadings

  Any party served with a petition, an application for an administrative fine, an administrative order or other instrument providing notice of a claim or defense to a claim initiating an individual proceeding before the Department shall file a written response or answer within twenty (20) days of receipt of the petition, application, order or other instrument initiating an individual proceeding. The original of the response must be filed with the Hearing Clerk of the Office of Administrative Hearings and a copy must be delivered or mailed to all other parties by 5:00 p.m. on the 20th day. Delivery to other parties must be made in person, by process server, or may be sent by certified mail, return receipt requested, restricted delivery. Every defense, in law or fact, to a claim for relief in any petition, application or administrative order initiating an administrative proceeding shall be asserted in the responsive pleading.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007; Amended at 27 Ok Reg 2498, eff 7-25-2010]

310:2-21-7.**Appearance of parties**

(a) A party in any proceeding before the Department may appear pro se, by an attorney licensed to practice law in Oklahoma, by an out-of-state attorney admitted to practice before the Department pursuant to rules of the Oklahoma Bar Association, or by a licensed legal intern. Provided further, corporate entities, limited liability companies, other business entities and governmental units or entities may appear only by an attorney as provided within this subsection.

(b) Attorneys who will appear before the Department on behalf of a party shall notify the Office of Administrative Hearings of their appearance by filing an entry of appearance.

(c) Any other attorney who files an entry of appearance on behalf of any party in the case or who is identified as a substitute attorney pursuant to a notice of substitution of attorney shall also be considered an attorney of record. The Department shall send notices to all attorneys of record until a substitution of attorney has been filed or an Application for Leave to Withdraw as Attorney has been filed and granted by the administrative law judge assigned to a case. Various attorneys may appear before the Department in a matter, but notice shall be sent only to those attorneys who are an "attorney of record" as defined in this subsection.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-8. **Ex parte communications**

 Communication with the assigned administrative law judge or his office regarding scheduling and procedural matters is permitted. A lawyer shall have no ex parte communication on the substance of a pending matter or proceeding with the assigned administrative law judge.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-9. **Initial scheduling** conference

   The Chief Administrative Law Judge or the assigned administrative law judge may set the dates for appearances and deadlines in a Scheduling Conference Order or in his discretion schedule a scheduling conference to be attended by the parties. The Chief Administrative Law Judge or the assigned administrative law judge may authorize such to occur by teleconference. The subjects and objectives of scheduling conferences shall be similar to those for pretrial proceedings in the district courts.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-21-10. Pre-hearing conferences**

(a) Purpose. All matters pending before the Office of Administrative Hearings are subject to pre-hearing procedures determined by the assigned administrative law judge to be appropriate for a prompt and efficient resolution to matter. At least one pre-hearing conference will routinely be ordered unless the assigned administrative law judge determines the same to be unnecessary.

(b) **Initial Disclosure Statement**. Within thirty (30) days after the filing of an answer, each party shall file the information, and shall provide copies to the assigned administrative law judge and all parties:

(1) A brief statement of the case, together with a list of stipulations to which the party will agree, and requested remedies;

(2) A list of all known witnesses who have knowledge of the facts surrounding the issues of the case and who may be expected to be called at the hearing. The list shall include a brief summary of the expected testimony of each witness;

(3) A list of any known documents or other exhibits together with the original or a copy of each document or exhibit that may be offered into evidence at the hearing. Non-documentary exhibits shall be described and a date given when they can be made available to the opposing party for inspection;

(c) **Pre-hearing** **Conference procedure**. The assigned administrative law judge shall provide notice to the parties of the date, time, and place of any pre-hearing conference at least ten (10) days prior to the scheduled date. The conference shall be informal, structured by the assigned administrative law judge, and not open to the public. If a record is deemed advisable by the assigned administrative law judge or requested by the parties, the conference may be recorded by audio tape and/or transcribed by a court reporter at the requesting party’s expense. The pre-hearing conference shall be used to resolve any dispute or matter the resolution of which would promote the orderly and prompt conduct of the pre-hearing process or the hearing on the merits. The administrative law judge shall issue an order reciting any agreements made by the parties as to any matter considered. No witnesses shall appear or present evidence. The assigned administrative law judge may convert a pre-hearing conference into a scheduling conference, which may be held telephonically.

(d) **Final Pre-hearing Conference.** The assigned administrative law judge may hold more than one pre-hearing conferences or a final pre-hearing conference to formulate the final plan to streamline the hearing on the merits. If a final pre-hearing conference is ordered, the attorneys and any unrepresented parties shall confer prior to the final pre-hearing conference and prepare a single suggested Pre-hearing Conference Order for use during the conference and the hearing on the merits. Any party unable to secure the cooperation of another party may submit their own Proposed Final Pre-hearing Conference Order and, if the other party’s cooperation is shown to be without cause, request that the other party’s Proposed Final Pre-hearing Conference Order be stricken. The Final Pre-hearing Conference Order may follow substantially the form provided in Rule 5 of the Rules for District Court, 12, O.S., Ch.2, App. Such order, when entered, controls the subsequent course of the proceeding, unless modified to prevent manifest injustice. The assigned administrative law judge may waive the requirement of a pre-hearing conference order unless such order is requested by a party.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007; Amended at 27 Ok Reg 2499, eff 7-25-2010]

310:2-21-11. Continuances

 Each party is entitled to a single continuance of the hearing on the merits upon request submitted at least three (3) days in advance of the hearing unless exigent circumstances make such notice impractical. Additional continuances may be granted only upon good cause. Motions for a continuance based upon cause shall be in writing and filed with the Hearing Clerk with a copy to the parties and the assigned administrative law judge. A motion for a continuance shall state the reason(s) for the request and specify the length of time requested.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-12. Subpoenas

(a)    Issuance. Subpoenas for the attendance of witnesses, the furnishing of information and the production of evidence shall be issued by the Office of Administrative Hearings upon request by a party. The requesting party must submit the subpoena to the hearing clerk to be issued. Filing a formal request for the issuance of subpoenas shall not be required. Subpoenas shall be served and a return made in the same manner as provided in the Oklahoma Pleading Code.

(b)    Failure to obey. The Commissioner or Petitioner may seek an appropriate judicial proceeding to compel compliance by persons who fail to obey a subpoena, who refuse to be sworn or make an affirmation at a hearing or who refuse to answer a proper question during a hearing. The hearing shall proceed despite any such refusal but the assigned administrative law judge may, in his discretion at any time, continue the proceedings as necessary to secure a court ruling.

(c)    Motions to quash. Motions to quash subpoenas may be filed with the Office of Administrative Hearings and may be decided by the assigned administrative law judge or the Chief Administrative Law Judge.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-13. Record

(a)  To be made. An electronic recording of the hearing proceedings shall be made. The recording will not be transcribed as a matter of course. The Department's electronic recording of the hearing shall be the official record of the individual proceeding. Copies of the official record shall be provided to a party upon written request.

(b)  Court reporter. A party may have the proceeding, or any part thereof, transcribed by a certified court reporter at the expense of the party. Each party requesting copies shall make such arrangements with a reporter, including costs, as required. The parties may agree to have the proceedings recorded and memorialized by a certified court reporter or may file a transcript prepared by a certified court reporter as a supplemental aid to the official record.

(c)  Maintained. The record of a proceeding and the file containing the notices and the pleadings will be maintained in a location designated by the Office of Administrative Hearings. All pleadings, motions, orders and other papers submitted for filing in such a proceeding shall be date/file-stamped by the Hearing Clerk upon receipt. The burden of showing substantial prejudice by any failure to correctly file-stamp any submission shall be upon the party asserting same.

(d)  Designation on appeal. On appeal, the parties may designate and counter-designate portions of the record pursuant to the APA.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-14. **Hearings open to the public**

 All hearings conducted by the Department shall be open to the public unless otherwise provided by law or these rules. The use of cameras or other audio-visual recording equipment during a hearing may be permitted at the discretion of the assigned administrative law judge.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-15. **Hearing** procedure

(a)  **APA Governs**. The order of procedure in hearings in all individual proceedings shall be governed by the Oklahoma APA and this Chapter. At the hearing, each party may make a brief opening statement; present witnesses, documents and exhibits on its behalf; cross-examine adverse witnesses. The right to make a closing statement or argument shall be at the discretion of the assigned administrative law judge. The rules of evidence shall be those specified by the APA. At the discretion of the assigned administrative law judge, any party may reopen the case in chief, even after the adverse party has rested. Parties may stipulate to any lawful matter.

(b)  Rulings. The assigned administrative law judge shall rule on the admissibility of evidence and objections to evidence, on motions or objections raised during hearings. All objections shall be made promptly or be deemed waived. Parties shall be deemed to have taken exception to any adverse ruling.

(c) **Standards of Proof**. The standard of proof in all individual proceedings affecting or prejudicing an individual’s license, registration, permit, certification or other authorization to engage in a given livelihood or occupation shall be clear and convincing evidence. In all other matters the standard of proof shall be a preponderance of the evidence.

(d)  Findings and conclusions. The assigned administrative law judge shall hear all evidence and arguments applicable in a case and shall prepare the final order in the proceeding, which shall include Findings of Fact and Conclusions of Law, separately stated. The record of the proceedings may be deemed to be closed when the parties announce that the matter has been fully submitted to the assigned administrative law judge. The assigned administrative law judge may allow the parties to submit briefs or proposed findings of fact and conclusions of law before ruling on the matter at issue. The assigned administrative law judge shall specify the time of filing and must rule on each proposed finding of fact and conclusion of law. The assigned administrative law judge may take the cause of action under advisement for a period not to exceed fifteen (15) days and will then issue a final order in writing to the parties.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-16. Signatures upon documents filed or submitted

(a) Any document, correspondence or order submitted to the Office of Administrative Hearings, or to any administrative law judge, shall be typed or printed legibly and shall bear the typed or printed name and the signature of the person who prepared the document or correspondence; the firm name if applicable; the complete mailing and office address, including the zip code; the telephone number, including the area code; and the assigned case number. If the document or correspondence has been prepared by an attorney, the attorney's Oklahoma Bar Association number shall also be listed.

(b) The signature of an attorney or party constitutes the following:

(1) a certification that the form, motion or other paper has been read;

(2) that to the best of the attorney's or party's knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and

(3) that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(c) Any document or correspondence submitted to the Court shall include a certificate of service to all parties.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007; Amended at 27 Ok Reg 2500, eff 7-25-2010]

310:2-21-17. Motions, applications and other written submissions

(a) **Margins and page length.** All written submissions shall be typewritten in clear type not less than 12-point, with single spaced lines of quoted matter and double spaced lines of unquoted matter. The margins of the printed page shall be one and one-quarter (1 1/4) inches on the left side and one (1) inch on the other three sides.

(b) Accompanied by proposed order. Motions and applications are to be accompanied by a proposed order.

(c) Length. All motions, applications and responses thereto, including briefs, shall not exceed ten (10) pages in length, excluding exhibits, without prior permission of the assigned administrative law judge. A request for enlargement of page length may accompany the written instrument filed. Reply briefs shall be limited to five (5) pages in length. Page limitations herein exclude only the cover, if used, index, appendix, signature line and accompanying information identifying attorneys and parties, and certificate of service. No further briefs shall be filed without prior permission of the assigned administrative law judge. Exceptions to this requirement are not favored.

(d) **When responses are due**. Unless otherwise ordered by the assigned administrative law judge, objections to motions or responses to written submissions are due within fifteen (15) days of receipt. Replies to objections or to responses to written submissions are due within ten (10) days of receipt. Exceptions to this requirement may be granted upon application and for good cause shown.

(e) Hearings upon motions or applications. The assigned administrative law judge shall decide any motion without hearing based upon the written submissions of the parties unless the assigned administrative law judge determines that an evidentiary hearing is necessary for a proper resolution of the issue(s) submitted.

(f) **Disposition of unopposed motions**. Dispositive motions that are unopposed may be deemed to be confessed and, where appropriate, may result in the summary disposition of a claim or defense as applicable.

(g) **Motions filed close to hearing**. Motions may not be filed within ten (10) days of hearing unless based upon a sudden emergency of facts that could not have been previously known. Copies of such motions must be hand delivered to all parties of record.

(h) **Motions will not stay discovery**. Motions to Dismiss or for Summary Judgment will not stay any discovery deadline unless by a written agreement of the parties that has been communicated to the assigned administrative law judge.

(i) **Citations of authority**. Legal citations are to be made in accordance with subsections c,d and e of Rule 1.200 the Oklahoma Supreme Court Rules. If an unpublished case or a case cited by a special reporter is cited as persuasive authority a copy must be attached to the document citing the case.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007; Amended at 27 Ok Reg 2500, eff 7-25-2010]

310:2-21-18. Default

 Any Respondent or other person who fails to appear as directed, after service of the instrument initiating an administrative proceeding as provided by these rules, may be determined to have waived the right to appear and present a defense to the allegations contained in the instrument that initiates the individual proceeding. A final order in such proceeding may be issued by the assigned administrative law judge or the Commissioner granting by default the relief prayed for in the petition.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-19. **Final** Order

Following the hearing, the assigned administrative law judge or hearing officer shall issue a Final Order resolving all of the issues submitted by the parties or identified by the assigned administrative law judge or hearing officer. The final order must comply with 75 O.S. § 312 and contain findings of fact and conclusions of law. Parties shall be notified by the Hearing Clerk either personally or by certified mail, return receipt requested, of the issuance of a Final Order. Upon request, a copy of the order shall be delivered or mailed to each party and to his attorney of record.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-20. **Proposed** **Final** Orders

 In any case or matter in which the Commissioner has decided, or is required by law, to issue a Final Order the parties may submit a proposed final order.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-21. Reconsideration

  Any party may petition for rehearing, reopening or reconsideration of any decision in an individual proceeding within ten days of its entry, pursuant to 75 O.S. § 317. Nothing shall prevent reconsideration of a matter in accordance with other statutory provisions.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

**310:2-21-22. Settlement agreements and consent orders**

(a) **Settlement agreements**. The resolution of an administrative proceeding that is reduced to writing by the parties shall be considered a settlement agreement. Settlement agreements may be approved by the assigned administrative law judge by agreement of the parties. Settlement agreements may be executed and tendered to the assigned administrative law judge at any time. The Department may retain jurisdiction of any settlement agreement, and the case may be re-opened if a breach of the agreement is alleged by any party. The settlement agreement may be used as evidence in any proceeding subsequent to an allegation of breach.

(b) **Consent orders**. The resolution of an administrative proceeding that is reduced to writing by the parties and submitted to the assigned administrative law judge or Commissioner for approval shall be considered a Consent Order. Consent Orders must conform to the requirements of OAC 310:2-21-19. A Consent Order may substitute for a settlement agreement at any time by agreement of the parties. A consent order shall constitute a Final Order in the case. By agreeing to the entry of a consent order, the parties expressly agree not to seek judicial review. Consent orders may be enforced as judgments in District Court as provided by law.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-23. Emergency actions

  When the Commissioner of Health or an assigned administrative law judge finds that the public health, safety or welfare requires that action be taken immediately and when such a finding is incorporated in an order, emergency action or summary suspension of a license may be ordered pending the filing of a petition and/or the outcome of an individual proceeding.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-24. **Sanctions for noncompliance**

The assigned administrative law judge may take any action allowed by law against any party as a sanction for any non-compliance with the rules in this chapter, including, but not limited to, assuming an adverse evidentiary inference, continuing any proceeding, striking any pleading, imposition of costs and fees, including attorneys fees, granting default, as applicable.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-21-25. **Time**

(a) **Computation.** In computing any period of time prescribed or allowed by this Subchapter or by order of an administrative law judge made pursuant to this Subchapter, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a legal holiday as defined by Section 82.1 of Title 25 of the Oklahoma Statutes or any other day when the offices of the Department do not remain open for public business until the regularly scheduled closing time, in which event the period runs until the end of the next day which is not a legal holiday or a day when the office of the Department does not remain open for public business until the regularly scheduled closing time. When the period of time prescribed or allowed is less than then (10) days, intermediate legal holidays and any other day when the offices of the Department does not remain open for public business until the regularly scheduled closing time, shall be excluded from the computation. The assigned administrative law judge may at any time in its discretion alter any period of prescribed or allowed time with prior notice to the parties.

(b) **Use of Mail.** When a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail or third-party commercial carrier or like means, three (3) days shall be added to the prescribed period.

[**Source:** Added at 27 Ok Reg 2501, eff 7-25-2010]

310:2-21-26. Protective orders

 At the time that a matter has been filed with the Office of Administrative Hearings all personal health information of any party or witness that comes into the possession of a party to pending matter is subject to an automatic protective order. The automatic protective order generally limits any party in possession of such information from publishing the information to any third party without first making application to the assigned administrative law judge supported by good cause. Third parties shall not include any person employed or affiliated with an attorney or his office who is representing a party to the individual proceeding.

[**Source:** Added at 27 Ok Reg 2501, eff 7-25-2010]

310:2-21-27. Filing by electronic means

(a) **General requirements**. Documents may be filed by facsimile or other electronic mail transmission ("e-mail") directly to the Clerk of the Office of Administrative Hearings. Litigants are encouraged to limit the use of facsimile or e-mail filings to those of a time-critical nature only. The e-mail address or facsimile number may be obtained from the Clerk. Filing by facsimile or e-mail does not relieve a party from providing a copy of the filing to all other parties in the case. Filing with the Office of Administrative Hearings does not constitute notice to the Oklahoma State Department of Health Office of General Counsel or any other party. Submissions received after 5:00 p.m., CST or CDT, shall be deemed filed on the next regular business day.

(b) **Use of facsimile transmission**. Facsimile transmissions are limited to not more than ten (10) pages. A single document may not be split into multiple facsimile transmissions to avoid the page limitation. Each facsimile transmission sent shall be accompanied by a Facsimile Transmission Cover Sheet. The cover sheet shall be the first page transmitted, followed by any special processing instructions. A cover sheet is required for each fax and is NOT considered part of the ten (10) page limitation. The cover sheet must contain the name, mailing address, telephone number and return fax number for the transmitting party. Reference must be made to the identity of the case by number and/or names of parties. The number of pages being transmitted MUST be on the cover sheet. The submission must include a visible hand-written signature on the document to be filed.

(c) **Use of electronic mail**. Filings by e-mail must be made as an attachment to the e-mail and not contained in the body of the e-mail. They must be in an electronic format compatible with Microsoft Word or PDF. The name, mailing address, e-mail address and telephone number of the person filing must be on the document filed. The subject description of the e-mail must include a reference to the case by case number. The submission must include a visible hand-written signature or the signature line must show a signature in electronic form as follows: /s/ First and Last Name. Electronic signatures shall be deemed authentic and be considered the signature of the person filing the document.

(d) **Other considerations**. Filing a document by facsimile or e-mail constitutes implied consent for the Office of Administrative Hearings and other parties in the case to notify and deliver documents to that party by facsimile or e-mail. A party who files by fax or e-mail shall retain the original source document in his or her possession or control during the pendency of the action in exactly the same format and content as transmitted and shall produce such document upon request by the assigned administrative law judge or any party to the action. Upon failure to produce the original source document when requested, the assigned administrative law judge may refuse to consider the fax or e-mail as a properly filed instrument. The quality of the original document transmitted shall be clear and dark enough to be transmitted legibly. The Department will not be responsible for events that disrupt or render impossible the receipt of documents transmitted electronically.

[**Source:** Added at 27 Ok Reg 2501, eff 7-25-2010]

**310:2-21-28. Video-teleconference hearings**

(a) **General**. Any hearing may be held using video-teleconference technology using the capability provided for such transmissions at qualified local county health department locations. The proceedings will be conducted in a manner that is similar to those conducted when all parties are in the same room. Participants will be required to sit in front of a television monitor and can see the parties at the other locations.

(b) **Procedure**. The opposing party witnesses are required to arrive at the designated video-teleconference venue at least twenty (20) minutes prior to the time of hearing. At the commencement of a video-teleconference the presiding administrative law judge, hearing clerk or video coordinator will check that the link has been established. The administrative law judge will confirm that the participants at the remote location can be seen and heard clearly and in like manner insure that the participants at the remote venue can clearly see and hear the participants and administrative law judge at the hearing venue. The assigned administrative law judge will decide and explain the procedure for the video-teleconference prior to testimony being taken. Identification for each participant, such as a driver’s license or photo I.D., may be required. At the beginning of the docket, each case will be called and the parties will be given the number in which their case will be heard. Only the case being heard by the presiding administrative law judge will be in video contact with the tribunal. Parties are to remain at the video-teleconference location until their case is called and their hearing has been conducted. The administrative law judge may dismiss witnesses prior to conclusion of the hearing.

(c) **Seating and configuration of the participants**. The Department’s representative and witnesses will sit on the **right** side of the table as they are facing the tribunal. The opposing party and witnesses will sit on the **left** side of the table as they are facing the tribunal. Depending upon the arrangement of the particular room at the remote venue, seating arrangements may change. All persons present will use good manners and maintain a civil attitude. All persons present will dress and act appropriately as conduct themselves as if they were in a formal courtroom, including turning off or silencing all cell phones or other electronic devices. No hats will be worn in either venue. Once a hearing begins, all video-teleconference participants at all locations connected to the conference shall be in full view of the camera at all times, with minimal visual obstructions.

(d) **Hearing procedure**. The administrative law judge will be in charge of the proceedings. Parties will be sworn in and testimony taken as in a courtroom proceeding. The entire proceeding will be recorded using both audio and video means. Only one person shall talk at a time as directed by the administrative law judge.

(e) **Recesses**. If a recess is taken, the administrative law judge will indicate for the record when it starts and stops and when the record is to continue. The administrative law judge will also note the presence or absence of those attending and previously identified prior to the recess.

(f) **Exhibits**. All exhibits that a party intends to present at a hearing must be submitted to the administrative hearing clerk and opposing party/counsel at least five (5) days prior to the hearing. All exhibits must be identified numerically and indicate if the exhibit is by petitioner or respondent. (Example: Respondent’s Exhibit 1). If the author of a document is not present to provide a foundation for admission, and the document does not otherwise qualify for an exception, it may be denied admission into evidence unless the administrative law judge determines it has probative value to the issues of the case. Other than a request for a hearing letters to the tribunal or letters to the Department are not part of the evidence unless offered by one of the parties and admitted.

(g) **Witnesses.** In some cases, witnesses may be required to wait outside the hearing room at a remote venue because of limitations on space or because of a procedural requirement. In most cases, all witnesses will be sworn in at the beginning of the hearing and admonished not to discuss their testimony with other witnesses.

(h) **Continuances.** A request to continue a video-teleconference hearing must be made no later than five (5) days before the hearing unless there is a showing of good cause. The request must be in writing and either mailed, faxed or emailed to the hearing clerk within the time specified. The request must explain why a continuance is necessary, must indicate the person requesting the continuance, and must indicate if the opposing counsel has been contacted and whether opposing counsel objects to the continuance request. If the hearing is continued, it will be scheduled on the next available docket.

(j) **Technical difficulties.** If a video link is interrupted or cannot be established, the hearing may be postponed or proceed as a telephone hearing at the discretion of the tribunal.

[**Source:** Added at 27 Ok Reg 2502, eff 7-25-2010]

310:2-21-29. Reconsideration of long-standing interpretations by the Department and final orders

(a) Long-standing interpretations. If the Department certifies that an interlocutory decision made by an assigned administrative law judge reverses or materially alters a long-standing interpretation of a rule or statute that is within the administrative or regulatory purview of the Department and that such interpretation would materially affect the outcome of a proceeding, upon request by the Department, the administrative law judge shall grant the Department an evidentiary hearing to demonstrate the longevity and appropriateness of the long-standing interpretation before pronouncing the interlocutory decision. The interlocutory decision shall uphold the Department’s long-standing interpretation if the Department successfully demonstrates that the interpretation has been adhered to for at least the last five (5) years, or since the statute or rule was passed or last amended if less than five (5) years since enactment, and that the Department’s interpretation is reasonably based upon the language of the statute or rule at issue. Each party may file a Memorandum of Law not to exceed five (5) pages in length regarding the matter in dispute within five (5) days of the assigned administrative law judge’s initial, disputed ruling. The Memoranda shall be submitted simultaneously and no reply or response will be permitted. The administrative law judge shall render a decision on the matter within five (5) days of submission of the Memoranda or the evidentiary hearing, whichever is later.

(b) Final decisions. If the Department is aggrieved by a final agency order the Department may request reconsideration of the decision to the Commissioner of Health. The Commissioner of Health, or his designee, shall receive an Application for Reconsideration with a brief in support that complies with section 310:2-21-17 within ten (10) days of the entry of the final agency order. Any party opposing the application may file a response and brief in support that complies with section 310:2-21-17 within ten (10) days of the date the application is filed. The grounds for such application shall be governed by 75 O.S. § 317. The Commissioner of Health may hold a hearing on the matter and shall render a decision on the application within twenty (20) days of its submission and the decision rendered by the Commissioner of Health shall be considered the final agency order in the proceeding before the Department.

[**Source:** Added at 27 Ok Reg 2502, eff 7-25-2010]

310:2-21-30. Requirements of parties filing petitions for judicial review

 Any party appealing a final agency decision of an administrative law judge or the Commissioner of Health must promptly file a file-stamped copy of the Petition For Judicial Review or other document initiating appellate review with the Hearing Clerk of the Office of Administrative Hearings in order to provide sufficient notice to prepare and transfer the record to the reviewing court in compliance with 75 O.S. § 320. Any party may submit by electronic means in PDF compatible format to the Office of Administrative Hearings and the opposing counsel a suggested Index of Record of Proceedings to be used by the Hearing Clerk in preparing the record for transmittal to the district court. If part of the administrative record is subject to a protective order, or includes a stipulation by the parties to limit the administrative record for purposes of judicial review, the suggested Index of Record must specifically describe any part of the record subject to the protective order or to the stipulation. Electronic recordings of an individual proceeding will be submitted to the reviewing court without transcription, unless otherwise required by the reviewing court; in such case, the expense of transcription shall be taxed and assessed pursuant to Article II of the Oklahoma Administrative Procedures Act.

[**Source:** Added at 27 Ok Reg 2503, eff 7-25-2010]

310:2-21-31. Summary adjudication and resolution

(a) General. The tribunal may resolve any dispute or controversy by full or partial summary adjudication when the tribunal is satisfied that there is no reasonable dispute as to a material fact, or the reasonable inferences that may be drawn from material facts, or if only questions of law are involved. A final agency order rendered as a result of this section must contain findings of fact and conclusions of law as required by 75 O.S.§ 312 and include special findings of fact supporting the tribunal’s determination that there is no reasonable dispute as to a material fact, the reasonable inferences that may be drawn from the material facts, or if only questions of law are involved. If the tribunal’s summary adjudication and resolution does not dispose of all the issues pending in the action then it must recite the issues remaining for determination in its decision granting partial summary relief.

(b) **Procedure**. The motion for summary adjudication and resolution may be filed by Respondent at any time after commencement of the action and by Petitioner at any time after twenty (20) days have passed from commencement of the action or after Respondent serves a motion for summary adjudication and resolution. The motion may be filed with or without supporting affidavits or other admissible evidence on all or part of the claims or defenses at issue in the proceeding. The motion must be served on the opposing party at least ten (10) days before the day set for the hearing on the merits. An opposing party may serve opposing affidavits or other admissible evidence before the hearing day. The facts and issues determined by the tribunal to not be at issue and resolved by a summary decision must be treated as established in the action.

(c) **Affidavits and testimony**. A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible into evidence according to 75 O.S. § 310, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit. The tribunal may permit an affidavit to be supplemented or opposed by admissions, depositions, answers to interrogatories, or additional affidavits. When a motion for summary adjudication and resolution is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleadings; rather, its response must, by affidavits or as otherwise provided in this rule, set out specific facts showing a genuine issue for hearing or further proceeding. If the opposing party does not so respond, a summary decision should, if appropriate, be entered against that party.

(d) **When affidavits are unavailable**. If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the tribunal may deny the motion, order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken or issue any other just order.

[**Source:** Added at 27 Ok Reg 2503, eff 7-25-2010]

SUBCHAPTER 23. REQUESTS FOR DECLARATORY RELIEF AND RULEMAKING

Section

310:2-23-1. Purpose and scope

310:2-23-2. Rules of procedure generally applicable

310:2-23-3. Initiating a proceeding for declaratory ruling

310:2-23-4. Initiating a proceeding seeking rulemaking

**[Source:** Reserved at 24 Ok Reg 1896, eff 6-25-2007; Added at 27 Ok Reg 2503, eff 7-25-2010]

310:2-23-1.  **Purpose and scope**

This Subchapter shall govern the procedure for requesting declaratory relief or rulemaking action by the Department. These rules are promulgated to provide due process to parties appearing before the Department and are not to be construed inconsistently with the Oklahoma Administrative Procedures Act. The assigned administrative law judge has the discretion to waive, supplement or modify any requirement of the applicable law or rule of procedure where permitted by law and when the administration of justice requires.

[**Source:** Added at 27 Ok Reg 2503, eff 7-25-2010]

310:2-23-2.  **Rules of procedure generally applicable**

 Unless expressly provided otherwise in this Subchapter, the rules of procedure set forth in Subchapter 21 shall be generally applicable to all actions before the Department where declaratory relief has been requested.

[**Source:** Added at 27 Ok Reg 2503, eff 7-25-2010]

310:2-23-3. **Initiating a proceeding for declaratory ruling**

Proceedings for declaratory ruling upon the applicability of any rule or order of the agency may be initiated before the Department by filing with the Office of Administrative Hearings a Petition which seeks relief authorized by 75 O.S. § 307. Each petition shall be styled “In re the request of \_\_\_\_\_\_\_\_\_\_, Petitioner, for a declaratory ruling.” The person or entity filing the Petition shall be denominated the Petitioner and the Department shall be denominated the Respondent. The petition shall include a statement of the legal authority and jurisdiction under which the proceeding is to be held, a reference to the particular sections of the rules or orders involved, a short and plain statement of the matters asserted giving a right to relief and the relief requested.

[**Source:** Added at 27 Ok Reg 2504, eff 7-25-2010]

310:2-23-4. **Initiating a proceeding seeking rulemaking**

(a) **General**. Proceedings seeking rulemaking by the Department may be initiated before the Department by filing with the Office of Administrative Hearings a Petition which seeks relief authorized by 75 O.S.§ 305. Each petition shall be styled “In re the request of \_\_\_\_\_\_\_\_\_\_, Petitioner, for adoption, amendment or repeal of a rule.” The person or entity filing the Petition shall be denominated the Petitioner and the Department shall be denominated the Respondent.

(b) **Contents of the petition**. The petition shall include a statement of the legal authority and jurisdiction under which the proceeding is to be held, a reference to the particular sections of the statutes and rules involved, a short and plain statement of the rule language the Petitioner seeks to add, amend or delete.

(c) **Emergency rulemaking**. A petition seeking or requesting an emergency rule must include a separate statement describing the circumstances or conditions constituting an imminent peril threatening the preservation of the public health, safety, or welfare, or a compelling public interest requiring the adoption of an emergency rule, or the amendment or repeal of an existing rule.

(d) **Notice of hearing**. If the Department determines that the petitioner’s request will proceed to hearing notice shall be issued to the petitioner and any other person who may have requested notice regarding said petition.

(e) **Denial**. *If the Department fails to initiate rulemaking proceedings in accordance with the Oklahoma Administrative Procedures Act within thirty (30) calendar days after the filing of a petition, the petition shall be deemed to have been denied.* [75 O.S. § 305.]

[**Source:** Added at 27 Ok Reg 2504, eff 7-25-2010]

SUBCHAPTER 25. DISCOVERY

310:2-25-1. Purpose and scope

310:2-25-2.Commencing discovery; time for completion

310:2-25-3. Discovery conference

310:2-25-4. Methods of discovery

310:2-25-5. Enforcement of discovery rules and orders

310:2-25-6. Time

310:2-25-7. Protected health information

310:2-25-1. **Purpose and scope**

(a) This Subchapter shall govern the procedure for discovery in matters before the Department to provide for the just, speedy and inexpensive determination of actions. Each party shall participate in the discovery process, to the maximum extent possible, without intervention by the Office of Administrative Hearings. If a dispute over discovery should arise between the parties, the parties shall in good faith attempt to resolve their differences informally, without resort to motion or request filed with the Department. Subsequent to such attempt, any request or motion to compel discovery must be accompanied by a verified affidavit from the party seeking discovery, stating that informal conference did not resolve the dispute, and the reasons why such resolution was not achieved.

(b) Discovery may be obtained by interrogatories (written questions), requests for production of documents or entry on land for inspection and other purposes, requests for admission, and depositions. Discovery may be obtained on any matter, not privileged, which is relevant to the subject matter involved in the pending case, and which is reasonably calculated to lead to the disclosure of admissible evidence. It is not a ground for objection that an answer relates to an ultimate fact in the case or the application of law to fact.

(c) A request, response or objection to discovery shall be signed by the party or the party’s attorney. A party responding to a request that was complete when it was made shall supplement the response if and when it is discovered that the response was incorrect when made, or that the response is no longer true.

(d) An evasive or incomplete answer to a discovery request may be treated as a failure to answer. If a party or his or her attorney knowingly fails to obey an order to provide or permit discovery, the assigned administrative law judge may issue such order(s) which are just and will remediate the failure to obey, including an order that the party or other person failing to act pay reasonable discovery fees and costs, including attorney fees. Failure to act as described in this section may not be excused on the ground that the discovery sought was objectionable.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007; Amended at 27 Ok Reg 2504, eff 7-25-2010]

310:2-25-2. **Commencing discovery; time for completion**

(a) The parties may begin discovery at any time after a scheduling order has been entered in the case; or, if no scheduling order is entered, discovery may begin once the matter has been set for hearing on the merits.

(b) Discovery shall be completed in accordance with the scheduling order entered in the case. If no scheduling order is entered, the parties shall complete their discovery on or before the date of the pre-hearing conference. If no pre-hearing conference is ordered, discovery shall be completed at least ten (10) days prior to hearing on the merits.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007]

310:2-25-3. **Discovery conference**

 A discovery conference may be ordered and conducted by the assigned administrative law judge or the Chief Administrative Law Judge. Special protective orders may be entered if deemed advisable, which may limit the information sought and/or the manner in which it will be provided.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007; Amended at 27 Ok Reg 2504, eff 7-25-2010]

310:2-25-4. **Methods of discovery**

(a)  Interrogatories. A party may serve on any other party written questions not to exceed 20 in number, including discrete subparts. Interrogatories inquiring as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories. Each question shall be answered separately and fully in writing or shall be objected to by the person making the answer. If objected to, the reasons shall be stated. Answers or objections shall be made within twenty (20) calendar days after service unless a shorter or longer time is ordered or agreed upon by the parties. Where the answer to a question may be obtained from the records kept by a party, it is a sufficient answer to specify the records from which the answer may be obtained. The answer shall afford the party making the request an opportunity to examine, audit or inspect such records.

(b)  Requests for Production or entry upon land. A party may serve on any other party a request to produce, inspect and copy any designated documents not confidential or privileged; or to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon. A request shall describe with particularity the items to be produced or inspected and shall indicate a reasonable time, place and manner of making the inspection and performing any related acts. A written response to each item or category shall be made within twenty (20) calendar days after the service of a request unless a shorter or longer time is ordered or agreed upon by the parties. The response shall either state that the production or inspection will be permitted, or if objected to, the reasons shall be stated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c)  Requests for Admission. A party may serve on any other party written requests for admissions, not to exceed 20 in number, regarding the truth of any matters that relate to statements or opinions of fact or of the application of law to fact. This includes the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have otherwise been furnished or made available for inspection and copying. Each matter for which an admission is requested shall be answered separately. The answer shall admit or deny the matter or state why the answering party can not admit or deny the matter. A written response shall be made within twenty (20) calendar days after the service of a request unless a shorter or longer time is ordered or agreed upon by the parties. If an objection is made the reasons shall be stated. Any matter admitted is established unless withdrawal or amendment of the admission is permitted by the assigned administrative law judge.

(d) **Depositions.** A party may ask questions of any other party or person, under oath, before a person authorized to administer such oath. A written transcript shall be made by the person seeking the deposition and that person shall provide a copy to the other party or person. The requirements for conduct of depositions set forth in 12 O.S. § 3230 shall be applicable to depositions in cases before the Department, unless such would conflict with the Administrative Procedures Act, or these rules. At the discretion of the assigned administrative law judge, depositions may be taken by videoconference and/or recorded on videotape or other electronic medium. Depositions so taken shall also be transcribed by stenographic means. The admissibility of video deposition evidence shall be at the discretion of the assigned administrative law judge. Video depositions for purposes of submission as testimony at the hearing, where the witness is unavailable, may be permitted on a case by case basis, subject to approval of the assigned administrative law judge.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007; Amended at 27 Ok Reg 2504, eff 7-25-2010]

310:2-25-5. **Enforcement of discovery rules and orders**

 The sanctions available in OAC 310:2-25-24 are applicable to this Subchapter, and failure or refusal to comply with a discovery order may result in the imposition of one or more sanctions against the offending party. In addition, the Department may seek enforcement by District Court order if deemed necessary for the proper and just disposition of the case.

**[Source:** Added at 24 Ok Reg 1896, eff 6-25-2007; Amended at 27 Ok Reg 2505, eff 7-25-2010]

**310:2-25-6. Time**

 Unless expressly provided otherwise in this Subchapter, the computation of time provisions in OAC 310:2-21-25 are applicable to this Subchapter.

**[Source:** Added at 27 Ok Reg 2505, eff 7-25-2010]

**310:2-25-7. Protected health information**

Discovery requests for medical records or other records containing protected health information of a party or a person who is not a party to a proceeding, shall be subject to the following requirements:

(1) Information contained in party’s medical records shall be disclosed only to counsel of record in this action or only to individuals certified by such counsel as employed by or assisting counsel in preparation for, or at the trial of this action. For the purposes of compliance with this rule, medical records shall mean any note, memorandum, or any other form of information, including information in electronic form, that is covered by the HIPAA Privacy Rule, 45 CFR § 164.xx, et seq.

(2) Any such documents or information obtained shall be used only for the purpose of litigation before the Department in the case in which the information was collected.

(3) The production of such documents or information concerning a resident’s medical records shall not constitute a waiver of any privilege or other claim or right of withholding or confidentiality which resident may have.

(4) It shall be the responsibility of the parties to maintain all confidential information in a secure place designed to prevent any third party from access.

(5) Copies of all documents containing such information should reflect that they are protected, privileged or confidential within the spirit of this Order, including any portion of a hearing transcript, exhibit, brief or other document containing such information, and shall be filed and transmitted using sealed envelopes or other appropriate containers clearly marked as being confidential and protected.

(6) To the extent possible, all pleadings and other documents used in an administrative hearing shall be redacted to exclude the name of a patient. For the purpose of clarity in hearings, parties may file a letter with the Office of Administrative Hearings identifying any redacted party. Upon conclusion of the case, the letter shall be placed in a sealed envelope and kept with the tribunal file.

**[Source:** Added at 27 Ok Reg 2505, eff 7-25-2010]

SUBCHAPTER 27. CONTRACTS WITH CHARITABLE HEALTH CARE PROVIDERS

310:2-27-1. Purpose

310:2-27-2. Definitions

310:2-27-3. Contingency

310:2-27-4. Application to contract as a charitable health care provider

310:2-27-5. Charitable provider responsibilities

310:2-27-6. Termination or rescission of charitable health care contracts

**310:2-27-1. Purpose**

 The rules of this Subchapter are adopted to implement Senate Bill 930, Oklahoma Sessions 2007, for the administration of contracts between charitable health care providers and the Oklahoma State Department of Health or a city-county health department for the benefit of Oklahoma residents who are medically indigent. These rules establish eligibility criteria for charitable health care providers and medically indigent persons, procedures for entering into and revoking contracts between the Oklahoma State Department of Health or a city-county health department and a charitable health care provider and responsibilities and obligations pursuant to such contracts.

**[Source:** Added at 25 Ok Reg 507, eff 12-14-2007 (emergency); Added at 25 Ok Reg 2387, eff 7-11-2008]

**310:2-27-2. Definitions**

 The following words or terms used in this Subchapter shall have the meaning described below unless the context clearly indicates otherwise:

 **"*Charitable health care provider*"**or**"charitable provider"** *means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of business or the practice of a profession and who provides care to a medically indigent person,* as defined in this subchapter*, with no expectation of or acceptance of compensation of any kind.* [51 O.S.Supp.2007, § 152(3)]

 **"Charitable provider contract"** means an annual agreement executed in compliance with this subchapter between a charitable health care provider and a contracting agency for the provision of health care services to the medically indigent.

 **"Claim"** as used in 'claims history' means any written demand presented by a claimant or the claimant's authorized representative to recover money as compensation for an act or omission committed by a person who provides health care.

 **"Claims history"** means a summary of the claims made against the applicant for a charitable provider contract with a contracting agency, including the number of claims, a brief description of each claim, the type of health care services being provided that precipitated each claim, and the money that was paid, or is being paid, for each claim, if any.

 **"Commissioner"** means the Commissioner of Health and the chief executive officer of the Oklahoma State Department of Health.

 **"Contracting agency"** means either the Oklahoma State Department of Health or a city-county health department.

 **"Department"** means the Oklahoma State Department of Health.

 **"Free clinic"** means a facility where the health care professional receives no form of compensation as provided at 76 O.S.Supp.2004, § 32 and the clinic requires no form of compensation from any patient.

 **"*Medically indigent*"** *means a person requiring medically necessary hospital or other health care services for the person or the dependents of the person who has no public or private third-party coverage, and whose personal resources are insufficient to provide for needed health care*. [51 O.S.Supp.2007, § 152(8)]

 **"Person"** means a human being or natural person, and does not include governmental agencies, corporations or other business entities.

 **"Person whose personal resources are insufficient to provide for needed health care"** means a person who has declared that the person, or family of the person seeking health care services, does not have sufficient resources to pay for the needed health care.

 **"Risk Management"** means the Office of the Risk Management Administrator of the Department of Central Services as provided at 51 O.S.Supp.2006, § 156.

**[Source:** Added at 25 Ok Reg 507, eff 12-14-2007 (emergency); Added at 25 Ok Reg 2387, eff 7-11-2008]

**310:2-27-3. Contingency**

 The execution or continuation of a contract between a contracting agency and a charitable health care provider, as defined within and provided for in this subchapter, is contingent upon funding being available to the contracting agency for this purpose, and nothing within this subchapter shall be construed to grant to a charitable health care provider any greater rights than those otherwise provided by law.

**[Source:** Added at 25 Ok Reg 507, eff 12-14-2007 (emergency); Added at 25 Ok Reg 2387, eff 7-11-2008]

310:2-27-4. Application to contract as a charitable health care provider

(a) The Department shall develop and provide an application form for a person to use when applying with a contracting agency to enter into a charitable provider contract.

(b) A person may apply to enter into a charitable provider contract as a charitable health care provider if such applicant:

(1) is licensed, certified, or otherwise authorized by the laws of Oklahoma to administer, in the ordinary course of business or in the practice of a profession, the health care that is the subject of the charitable health care contract;

(2) will provide health care to the medically indigent, as defined in section 310:2-27-2; and

(3) submits a complete application to a contracting agency requesting to enter into a charitable provider contract, and the application must include:

(A) the scope of service the applicant will provide to the medically indigent; and

(B) the applicant's claims history for the last five (5) years.

(c) The claims history of the applicant will be reviewed by Risk Management to determine the amount of the insurance premium the Department would be required to pay into the State's self-insurance pool. This assessment shall be considered by the contracting agency when determining if the applicant will be awarded a charitable provider contract.

(d) A health care provider whose application to be granted a charitable provider contract from a contracting agency is denied may re-submit the application with a different scope of service.

**[Source:** Added at 25 Ok Reg 507, eff 12-14-2007 (emergency); Added at 25 Ok Reg 2387, eff 7-11-2008]

**310:2-27-5. Charitable provider responsibilities**

(a) The charitable provider is responsible for determining the patient is medically indigent before providing health care services by confirming that the person seeking services has:

(1) no health insurance;

(2) not been informed that he or she is Medicaid

eligible; and

(3) insufficient income to pay for the needed health care services.

(b) All professional services rendered by the charitable provider to the medically indigent must be provided gratuitously and with no expectation or acceptance of compensation of any kind.

(c) Upon receipt of a claim by the charitable health care provider indicating that the claimant is seeking compensation for an act or omission by the charitable provider occurring when rendering professional services to a medically indigent person at, or on referral from, a free clinic, the charitable health care provider shall submit the claim to Risk Management and the contracting agency and shall not submit such claims to a professional malpractice insurance carrier.

(d) The charitable provider shall keep records related to the performance of the charitable health care contract during the term of the contract for a period of two years after the contract ends. Upon request, the charitable provider shall make these records available to the contracting agency or Risk Management.

**[Source:** Added at 25 Ok Reg 507, eff 12-14-2007 (emergency); Added at 25 Ok Reg 2387, eff 7-11-2008]

**310:2-27-6. Termination or rescission of charitable health care contracts**

(a) Charitable health care contracts may be terminated or rescinded by the Department in the event of noncompliance with any provision of the charitable provider contract or this subchapter or the unavailability of funding for such contracts. Before terminating or rescinding a contract, the Department will give the charitable health care provider thirty (30) days written notice and request information as to why the charitable health care contract should not be terminated or rescinded.

(b) Upon completing the review of any information submitted in re-consideration of terminating or rescinding the charitable provider contract, the Department will provide the charitable health care provider its decision in writing. This final decision is not appealable.

**[Source:** Added at 25 Ok Reg 507, eff 12-14-2007 (emergency); Added at 25 Ok Reg 2387, eff 7-11-2008]