

INITIAL RULE IMPACT STATEMENT

(This document may be revised based on comment received during the public comment period.)

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH

1. DESCRIPTION:

310:2-7: The proposed amendment removes "Part 1 Environmental Health Penalties" to accurately reflect that all sections currently within Part 1 are applicable to all administrative penalty proceedings. The sections within Part 1 of Subchapter 7 are not being revoked.

310:2-7-1. Applicability. In conjunction with the proposed amendment to remove Part 1, the reference to Part 1 Environmental Health Penalties is struck through.

310:2-11: Revising title of Subchapter 11 from Environmental License Processing Times to Consumer Health Service Processing Times to accurately reflect how this subchapter is used.

310:2-11-1. Purpose and applicability. Similar to the Subchapter title name change, the proposed revision is to reflect that it applies to Consumer Health Services. The provision that states this subchapter supersedes other rules is also revoked.

310:2-11-2. Definitions. Updated definitions to state Consumer Health Service rather than Environmental Health Service.

310:2-11-3. Application submittal. The proposed revision provides clarity to the section by stating that it applies to permits and licenses.

310:2-11-4. ~~Common procedures~~ Application processing and review. Changed the administrative completeness review deadline from 60 to 30 days. Also made additional revisions to provide clarity that an application is considered withdrawn if the applicant does not respond within 180 days; that Consumer Health Service has the discretion to grant an extension, and that regulatory review period is a separate 30 day period.

310:2-11-5. Pending failures. Provide clarity that an applicant can withdraw application and receive a refund if Consumer Health Service fails to meet its own deadline requirements.

310:2-21-10. Pre-hearing procedure. (b) Initial Disclosure Statement is revoked. That subsection is duplicative as that information is covered through a witness and exhibit list and a pre-trial brief.

310:2-21-28. Video-teleconference hearings. The proposed revision allows for videoconference hearings to occur by phones and computers, rather than being limited to videoconference rooms at county health department buildings.

310:2-25-5. Enforcement of discovery rules and order. The proposed revision corrects a citation from OAC 310:2-25-24 to OAC 310:2-21-24.

2. DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:

Individuals and small businesses will be affected by these proposed rule changes. There is no anticipated cost impact to the State.

3. **DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:**

The proposed revisions at 310:2-21-28 will make it easier for all people involved in an administrative hearing to attend by videoconference, compared to driving to a county health department building and using its equipment.

All people will benefit from Subchapters 7 and 11 being renamed properly, as they will now have the ability to know what rules apply to them.

Small businesses will also benefit from changes in Subchapter 11 as the review deadline has been reduced by 30 days, and it is now known that this Subchapter applies to all Consumer Health Service licenses.

All proposed changes are being made in compliance with Governor's Executive Order 2020-03. The purpose of this executive order is to reduce and remove unnecessary, ineffective, and outdated regulatory restrictions. These proposed revisions also provide clarity and reduce ambiguities within the rules.

There is no expected change in health outcomes.

4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:**

There are no costs associated with implementation.

5. **COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:**

There are no costs associated with implementation.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

There will be no impact on political subdivisions and it will not require their cooperation in implementing or enforcing the proposed amendment.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**

There is no known adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.

8. **EFFORTS TO MINIMIZE COSTS OF THE RULE:**

There are no less costly means currently identified.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**

Public health and safety will not be impacted by these changes.

10. DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:

Public health and safety will not be impacted if the proposed policy change is not adopted this season.

11. PREPARATION AND MODIFICATION DATES:

This rule impact statement was prepared on October 5, 2021.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Subchapter 7. Additional Procedures for Administrative Penalty Proceedings

~~Part 1. Environmental Health Penalties~~ [REVOKED]

310:2-7-1. Applicability [AMENDED]

Subchapter 11. ~~Environmental~~ Consumer Health Service License Processing Times

310:2-11-1. Purpose and applicability [AMENDED]

310:2-11-2. Definitions [AMENDED]

310:2-11-3. Application submittal [AMENDED]

310:2-11-4. ~~Common procedures~~ Application processing and review [AMENDED]

310:2-11-5. Pending failures [AMENDED]

Subchapter 21. Rules of Procedure Governing Individual Proceedings

310:2-21-10. Pre-hearing procedure [AMENDED]

310:2-21-28. ~~Video teleconference~~ Videoconference hearings [AMENDED]

Subchapter 25. Discovery

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

SUMMARY:

Various subchapters of Chapter 2 are being revised. "Environmental Health Penalties" is being removed in Subchapter 7 to accurately reflect that this Subchapter applies to all proceedings. Similarly, Subchapter 11 has been updated to accurately reflect that it applies to all Consumer Health Service licenses, not just environmental license, and to reduce the completeness review period from 60 to 30 days. Subchapter 21 has been updated to allow an individual to use his/her phone or laptop for videoconference hearings, rather than driving to a county health department location and using its equipment. Lastly, Subchapter 25 has been revised to correct a scrivener's error made in a legal reference.

AUTHORITY:

Commissioner of Health, Title 63 O.S. § 1-104, and Promulgation of Certain Rules, Title 75 O.S. § 302.

COMMENT PERIOD:

November 15, 2021 through the close of the Department's normal business hours, 5 PM, on December 15, 2021. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through the close of the Department's normal business hours, 5 PM, on December 15, 2021, submit written comment to the contact person identified below, or may, at the hearing, ask to present written or oral views.

PUBLIC HEARING:

Pursuant to 75 O.S. § 303(A), the public hearing for the proposed rulemaking in this chapter shall be on December 15, 2021 at the Oklahoma State Department of Health Auditorium, 123 Robert S. Kerr Avenue, Oklahoma City, Oklahoma 73102 from 9:30 AM to 12:30 PM. The meeting may adjourn earlier if all attendees who signed up to comment have completed giving their comments. The alternate date and time in the event of an office closure due to inclement weather is January 7, 2022 in the Auditorium, from 9:30 AM to 12:30 PM. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice. Validated parking will be provided for the parking lot located at the east corner of Broadway and Robert S. Kerr Avenue, subject to availability.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and

indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through the close of the Department's normal business hours, 5 PM, on December 15, 2021, to the contact person identified below.

COPIES OF PROPOSED RULES:

The proposed rules may be obtained for review from the contact person identified below or via the agency website at www.ok.gov/health.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., § 303(D), a rule impact statement is available through the contact person identified below or via the agency website at www.ok.gov/health.

CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, phone (405) 426-8563, e-mail AudreyT@health.ok.gov.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH**

**SUBCHAPTER 7. ADDITIONAL PROCEDURES FOR ADMINISTRATIVE
PENALTY PROCEEDINGS**

~~PART 1. ENVIRONMENTAL HEALTH PENALTIES~~

310:2-7-1. Applicability

The requirements of ~~Part 1~~ of this Subchapter, ~~Environmental Health Penalties~~, are in addition to other requirements of this Chapter governing individual proceedings and are applicable to matters where the Department is a party brought under 63 O.S. § 1-1701.1A.

**SUBCHAPTER 11. ~~ENVIRONMENTAL~~ CONSUMER HEALTH SERVICE LICENSE
PROCESSING TIMES**

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 Division~~ or the Occupational Licensing ~~Service and their successors~~ Division, both within Consumer Health Service.

(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.~~

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~~ regulatory review.

"**Application**" means a document prepared in accordance with the rules and the forms and instructions provided by ~~the Environmental~~ Consumer 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~~ Consumer 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~~ regulatory reviews, and information submitted voluntarily by the applicant.

310:2-11-3. Application submittal

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

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

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

310:2-11-4. Common procedures Application processing and review

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

- (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 will~~ be timely logged.

(b) **Administrative completeness review.** Unless otherwise provided in this Subchapter, the reviewer ~~shall have 60~~ has 30 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 will~~ immediately notify the applicant ~~by mail~~ and ~~shall~~ indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification ~~shall does~~ 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 regulatory~~ review ~~shall will~~ 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 regulatory~~ review period begins.

(c) **Technical Regulatory review.** Each Division involved ~~shall will~~ have ~~thirty (30)~~ 30 days from the date ~~a completed an~~ application is ~~filed~~ ~~determined to be administratively complete~~ 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 regulatory~~ review is ~~toiled~~ ~~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 regulatory~~ review, unless the request for supplemental information is a second or later request that identifies new deficiencies not previously identified.

(f) **Delays Failure to provide supplemental information.** ~~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. An application is considered withdrawn, if an applicant fails to provided supplemental information within 180 days from the date of request. The 180 day time period may be extended by agreement for good cause.~~

(g) **Extensions.** Extensions may be ~~made~~ ~~allowed~~ as provided by law or at Consumer Health Service's discretion.

310:2-11-5. Pending failures

(a) **Circumstances outside agency control.** ~~Technical review~~ Review times shall may be tolled ~~for specified when, prior to the deadline, when~~ 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~~ or 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. When the Department is unable to meet an application deadline for reasons within its control, the applicant can agree to an extension or withdraw the application and receive a refund for the application fee, unless the refund is prohibited by law.~~

SUBCHAPTER 21. RULES OF PROCEDURE GOVERNING INDIVIDUAL PROCEEDINGS

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

(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 following 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;~~

~~(e) 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)(c) 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.

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

(a) **General.** Any hearing may be held ~~using by video teleconference~~ videoconference 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~~ A participant is required to sit in front of a ~~television monitor and camera device (e.g. phone, laptop, computer monitor, television)~~ that allows the person to 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~~ videoconference 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 remote participants ~~at the remote location~~ can be seen and heard clearly and in like manner ~~insure~~ verify that the remote 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~~ videoconference 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)~~(d) **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)~~ (e) **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)~~ (f) **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)~~ (g) **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.

(+) (h) **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.

SUBCHAPTER 25. DISCOVERY

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

The sanctions available in OAC ~~310:2-25-24~~ 310:2-21-24 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.