

**TITLE 765. OKLAHOMA USED MOTOR VEHICLE DISMANTLER, AND  
MANUFACTURED HOUSING COMMISSION  
CHAPTER 2. INFORMAL AND FORMAL PROCEDURES**

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 3. Formal Procedures

765:2-3-1 [AMENDED]

765:2-3-6 [AMENDED]

765:2-3-13 [AMENDED]

**SUMMARY:**

The proposed rule amendments change the present rules to conform to HB 3271, modifying the agency name to Oklahoma Used Motor, Dismantler, and Manufactured Housing Commission, adds statutory reference on rulings and modifies the appeal process.

**AUTHORITY:**

Oklahoma Used Motor Vehicle, Dismantler, and Manufactured Housing Commission;

47 O.S. Section 582(E)(1);

75 O.S. Section 583 B.3.;

75 O.S. Section 302 et.seq

**COMMENT PERIOD:**

Persons wishing to present their views regarding this action may do so by delivering or mailing their written comments to the Used Motor Vehicle Dismantler, and Manufactured Housing Commission, 421 NW 13<sup>th</sup>, Suite 330, Oklahoma City, Oklahoma 73103, by February 17<sup>th</sup>, 2023.

**PUBLIC HEARING:**

The public hearing will be held on Tuesday, March 14<sup>th</sup>, 2023, at 10:30 AM, at the office of the Used Motor Vehicle Dismantler, and Manufactured Housing Commission, 421 NW 13<sup>th</sup>, Suite 100, Oklahoma City, Oklahoma.

**REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

The Used Motor Vehicle Dismantler, and Manufactured Housing Commission requests that business entities affected by these proposed rules provide the Commission, within the comment period, in dollar amounts, if possible, the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to John W. Maile, at the above address, before the close of the comment period on February 17<sup>th</sup>, 2023.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rules may be obtained for review at the office of the Used Motor Vehicle Dismantler, and Manufactured Housing Commission, 421 NW 13<sup>th</sup>, Suite 330, Oklahoma City, Oklahoma.

**RULE IMPACT STATEMENT:**

A rule impact statement will be prepared and be available after February 1<sup>st</sup>, 2023, at the office of the Used Motor Vehicle Dismantler, and Manufactured Housing Commission.

**CONTACT PERSON:**

John W. Maile, Director, Used Motor Vehicle Dismantler, and Manufactured Housing Commission, 421, NW 13<sup>th</sup>, Suite 330, Oklahoma City, Oklahoma 73103 (405)521-3600.

## CHAPTER 2. INFORMAL AND FORMAL PROCEDURES

### SUBCHAPTER 1. INFORMAL PROCEDURES - CONSUMER COMPLAINTS

#### 765:2-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of 75 O.S. Section 250 et seq., specifically 75 O.S. Section 302, and 47 O.S. Section 582 (E). This Chapter will provide a description of the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions issued by this Commission for use by the public.

#### 765:2-1-2. Form

All consumer complaints must be made on the complaint form provided by the Commission.

#### 765:2-1-3. Procedure

If a complaint cannot be resolved in any other manner, an informal conference may be conducted by the Executive Director or his designee to attempt to resolve the complaint. If the informal conference does not resolve the complaint and the complaint concerns a matter which may give rise to disciplinary proceedings against a dealer, the matter may become the subject of a formal proceeding for disciplinary action.

#### 765:2-1-4. Applicants with Felony conviction(s)

An applicant who has been convicted of a Felony in any state or Federal jurisdiction within the last twenty (20) years preceding the application for license shall require review and approval by the Commission en banc before beginning to act as a licensee.

### SUBCHAPTER 3. FORMAL PROCEDURES

#### 765:2-3-1. Parties to proceeding

(a) The Executive Director or the Commission's legal counsel shall file a sworn complaint for every individual proceeding. The style of the complaint shall be: STATE OF OKLAHOMA, ex rel. THE OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND PARTS- MANUFACTURED HOUSING COMMISSION vs. PARTY'S NAME.

(b) A Respondent in an individual proceeding shall be the legal entity holding a license. A person that is a stockholder, member of a limited liability company, or stockholder in the legal entity conducting business, may also be named as a party Respondent. Any sanction which may be imposed against a licensee may be imposed against the individual Respondent where the acts giving rise to the imposition of the sanction were committed by or are legally attributable to the individual Respondent.

#### 765:2-3-2. Notice of hearing

(a) **General statement.** All parties shall be given reasonable notice of hearing in every individual proceeding.

(b) **Content of notice.** The notice shall include:

- (1) a statement of the time, place and nature of the hearing,
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held,
- (3) a reference to the particular sections of the statute and rules involved, and
- (4) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

**765:2-3-3. Persons to be notified**

- (a) Every party to an individual proceeding shall be entitled to notice of the proceeding.
- (b) If the applicant or licensee is a salesman, the Commission shall notify the person, firm, association, corporation or trust with whom the salesman is or will be associated.

**765:2-3-4. Method of service**

- (a) **Service.** All notices or other papers requiring service in an individual proceeding shall be served in one of the following manners:

- (1) personally, by a person appointed by the Commission for such purpose, in any manner authorized by the law of this state for the personal service of summons in proceedings in a state court, or
- (2) by certified mail mailed by the Executive Director or his/her designee, addressed to the noticee at such post office address as he/she may have filed with the Commission, or if no such address is in file, at the noticee's last known post office address, or
- (3) if no known post office address can be discovered, and after exercise of due diligence, by publication in such newspapers and for such time, or by posting in such places for such time, as the Executive Director may determine and direct as most likely to give the noticee timely notice.
- (4) personally, by any employee of the Commission.

- (b) **Completion.** Service of notice shall be complete upon personal service, upon the receipt of the card showing receipt of certified mail by the addressee, or upon the posting of notice or first publication thereof, as the case may be.

**765:2-3-5. Time for hearing**

- (a) **Setting hearing.** The time set for a hearing, specified in the notice, shall not be less than ten (10) days after the date the notice is completed.
- (b) **Continuances.** Written motions for any continuances or extensions of time shall state the time desired and the reasons for the request. The Commission hereby authorizes the Executive Director to rule on said motions. Said application shall be served upon the Executive Director. If the extension is denied, the party may renew the request and make proper showing for continuance at the hearing.

**765:2-3-5.1. Pre-hearing Conference**

As part of the individual proceeding, a pre-hearing conference may be conducted at the initiative of the Movant, to be conducted by the Executive Director or his designee, or in appropriate circumstances by legal counsel for the Commission, for the purpose of identifying the issues and evidence to be considered or introduced at the hearing. Said

pre-hearing conference may be used for negotiation of a proposed Consent Order or other disposition of the proceeding.

### **765:2-3-6. Hearing**

(a) **Presiding officer.** The hearing shall be conducted by the Chairman of the Commission or his designate.

(b) **Order of procedure.** Each individual proceeding shall proceed as follows:

(1) Any party shall at all times have the right to counsel. Counsel must be licensed to practice law by the Oklahoma Supreme Court.

(2) All parties shall be afforded the opportunity to present witnesses, evidence, and argument on all issues involved.

(3) A party may cross-examine witnesses.

(4) The Commission or hearing officer may ask questions of all parties.

(c) **Objections and motions.** The Chairman or hearing officer shall rule on the admissibility of evidence and objections to evidence, and shall rule on motions or objections raised in the course of the hearing. In the exercise of this function, the Commission or officer may rely on the advice of counsel present and serving in an advisory capacity. In making a ruling on evidence, the Chairman or hearing officer shall not be required to follow Rules of Evidence, but may use his/her own judgment whether the evidence should be admitted. Any party may object to a ruling which the party considers erroneous, and an exception to such ruling shall be noted of record. Failure to timely object to any alleged error or irregularity shall be deemed as a waiver of such objection.

(d) **Burden and standard of proof.** The burden of proving the allegations contained in its Complaint shall be upon the Movant. The standard of proof required to sustain the imposition of any sanction against a Respondent shall be by clear and convincing evidence.

(e) **Ruling.**

(1) The Commission or Hearing Officer shall prepare Findings of Fact and Conclusions of Law. The Commission or Hearing Officer may request the parties to submit proposed Findings and Conclusions before making a final ruling. Any party may file proposed Findings and Conclusions. Disposition of any individual proceeding may be by stipulation, agreed settlement, consent order, default or majority vote.

(2) The Commission by majority vote, may deny, suspend, or revoke a license or impose a fine, if authorized, for any of the reasons provided in 47 O.S. Section 581 et seq. The Commission, by majority vote, may deny, suspend, cancel, or revoke a license or impose a fine, if authorized, for any of the reasons provided in 47 O.S. Section 591.1 et seq. and 47 O.S. Section 592 et. seq.

### **765:2-3-7. Hearing officer**

(a) **Selection.** A hearing may be conducted by a hearing officer designated by the Chairman.

(b) **Hearing.** The hearing officer shall swear witnesses, hear testimony, admit evidence, and make rulings on objections and motions, and prepare proposed Findings of Fact and Conclusions of Law and submit the Findings and Conclusions to the Commission.

(c) **Ruling.** When a hearing officer is used and a majority of the Commissioners have not heard the case or read the record, any decision adverse to any party other than the

Commission shall be postponed until a copy of the proposed Order is served upon all parties and each is given an opportunity to reply, either orally or in writing. The proposed order shall be prepared by the person(s) who conducted the hearing. A statement of the reasons for the order and each issue of fact or law necessary to the order shall accompany the proposed order. This requirement may be waived by the written stipulation of all parties.

#### **765:2-3-8. Failure to appear**

Any defendant or accused who fails to appear as directed, after having received proper notice, may be determined to have waived his/her right to present a defense to the charges alleged in the complaint and a denial, suspension, or revocation of a license, or other disciplinary action may be ordered by the Commission if it appears, after having reviewed the evidence, that the violation alleged did in fact occur.

#### **765:2-3-9. Subpoenas**

(a) **Witnesses.** Subpoenas for the attendance of witnesses, and/or for the furnishing of information required by the Commission, and/or for the production of evidence or records of any kind shall be issued by the Executive Director of the Commission. Subpoenas shall be served and a return made in any manner prescribed by general civil law.

(b) **Sanctions.** Upon the failure of any person to obey a subpoena, upon the refusal of any witness to be sworn or make an affirmation, or to answer a lawful question put to him/her in the course of the hearing, the Executive Director may institute appropriate judicial proceedings under the laws of the state for an order to compel compliance with the subpoena or the giving of testimony, as the case may be. The hearing shall proceed, so far as it is possible, but the hearing officer or the Commission, in its discretion, at any time may continue the proceedings for such time as may be necessary to secure a final ruling in the compliance proceeding.

#### **765:2-3-10. Depositions**

The Commission, or any party to a proceeding before it, may take the deposition of witnesses, within or without the state, in the same manner as provided by law for the taking of depositions in civil actions in courts of record. The admissibility of a deposition and objections to all or part of a deposition shall be determined by the Commission in accordance with the standards for such evidence as provided in the Administrative Procedures Act.

#### **765:2-3-11. Record of hearing**

(a) **Contents of record.** The record in every individual proceeding shall include the following:

- (1) all pleadings, motions, and intermediate rulings,
- (2) evidence received and considered,
- (3) a statement of matters officially noticed,
- (4) questions and offers of proof, objections and rulings thereon,
- (5) proposed findings and exceptions,
- (6) any decision, opinion, or report by the person(s) presiding at the hearing, and
- (7) all staff memoranda or data submitted to the hearing officer or the Commission in connection with their consideration of the case.

- (8) the recording of the individual proceeding made by the Commission.
- (b) **Recording.**
- (1) A record of the hearing, by means of recording or court reporter's transcript, will be made of all hearings conducted by the Commission or a hearing officer unless the presiding officer designates otherwise.
- (2) The record of the hearing and the file containing the pleadings will be maintained in a place designated by the Executive Director. The recordings of the proceedings shall be maintained for a period of one (1) year.
- (c) **Transcript.** A transcript of the proceeding shall not be transcribed except upon written application by any party to the action. The party requesting transcription will bear the cost and will pay a fee according to a schedule established by the Commission. An initial deposit set by the Commission also must be paid by said party.
- (d) **Final order.** All final orders in individual proceedings shall be in writing. The final order shall include Findings of Fact and Conclusions of Law, separately stated. A copy of the final order will be mailed forthwith to each party and to his/her attorney of record. A Final Order may be signed by the Chairman or his designee without approval or review of the Commission, so long as said Order fairly represents the action taken. No other signatures shall be required.

#### **765:2-3-12. Rehearing**

- (a) **Petition.** A petition for rehearing is not required before an appeal may be perfected in accordance with 47 O.S. Section 585. A petition for rehearing, reopening, or reconsideration of a final order may be filed with the Executive Director within ten (10) days from the entry of the order. It must be signed by the party or his/her attorney or representative and must set forth with particularity the statutory grounds upon which it is based. However, a petition for rehearing based upon fraud by any party or procurement of the order by perjured testimony or fictitious evidence may be filed at any time.
- (b) **Disposition.** An order of the Commission granting a rehearing shall set forth the grounds which justify such action. The hearing shall be confined to the grounds upon which the rehearing was ordered.

#### **765:2-3-13. Appeal**

The licensee may appeal the decision of the Commission within thirty (30) days from the date thereof. Such appeal shall be done in the manner provided in 47 O.S. Section 581 et seq., and the Administrative Procedures Act. ~~If the issues involved were first presented to the Commission by a complaint filed with the Commission, the complainant shall have the same right to appeal.~~

#### **765:2-3-14. Summary proceedings**

Any matter which could be the subject of a Formal Proceeding may be disposed of by a summary proceeding when agreed to by all parties. Such summary proceeding may include, but not limited to, Consent Agreement, or Consent Orders, signed by all affected parties.

### **SUBCHAPTER 5. ARBITRATION**

#### **765:2-5-1. Agreement required**

Any party submitting a matter in controversy to this Commission pursuant to the provisions of 47 O.S. 1997 Supp. Section 582(E)(2)(f) shall execute an agreement consenting to binding arbitration by this Commission. Said agreement shall be on a form promulgated by the Commission, which form shall state the procedure to be followed in the arbitration proceeding, the rights of the parties in said proceeding, the method of assessing costs to each party, and the costs which may be assessed.

#### **765:2-5-2. Parties to proceeding**

The party seeking affirmative relief against another party shall be the Complainant. The party against whom relief is sought shall be the Respondent.

#### **765:2-5-3. Pleadings**

The Complainant shall file a sworn statement of facts and the relief sought which shall be entitled "Complaint". The Respondent shall, within twenty (20) days thereafter, answer said complaint by a sworn statement which shall be entitled "Response". The Response shall also contain Respondent's request for relief sought, if any. No other pleadings shall be required.

#### **765:2-5-4. Notice of hearing**

All parties shall be given reasonable notice of hearing on every proceeding. The notice shall include a statement of the time and place of the hearing. Said hearing shall, if practicable, be held at a time and place agreed to by the parties.

#### **765:2-5-5. Persons to be notified**

Each party to an arbitration proceeding shall be entitled to notice of any proceeding and the time and date of any hearing in said proceeding. Any party represented by an attorney shall be deemed to be notified by notice to the party's attorney.

#### **765:2-5-6. Method of service**

- (a) **Service.** Notices to each party shall be served in one of the following manners:
- (1) personally, by a person appointed by the Commission for such purpose, or
  - (2) by certified mail, return receipt requested, to the party's address as stated to the Commission, or in case a party is represented by an attorney, to the party's attorney at the address provided to the Commission by said attorney.
- (b) **Completion.** Service of the notice shall be complete upon personal service or upon the receipt of the card showing receipt of certified mail by the addressee, as the case may be.

#### **765:2-5-7. Time for hearing**

- (a) **Setting hearing.** The time set for a hearing, specified in the notice, shall not be less than ten (10) days after the date the notice is completed.
- (b) **Continuances.** Written motions for any continuances or extensions of time shall state the time desired and the reasons for the request. The Executive Director or his designate



may rule on said motions, or in the case of proceeding before the Commission en banc, the Chairman or his designate may make said ruling. Said application shall be served upon the Executive Director. If the request is denied, the moving party may renew the request for continuance at the hearing.

#### **765:2-5-8. Initial hearing**

- (a) **Presiding officer.** The initial hearing shall be conducted by the Executive Director of the Commission or his designate. If the hearing is conducted by a designate, the person so designated shall be licensed to practice law in the State of Oklahoma.
- (b) **Order of procedure.** Each individual proceeding shall proceed as follows:
  - (1) Any party shall at all times have the right to counsel. Counsel must be licensed to practice law by the Oklahoma Supreme Court.
  - (2) All parties shall be afforded the opportunity to present witnesses, evidence, and argument on all issues involved. The presiding officer shall swear witnesses and admit evidence.
  - (3) A party or counsel may cross-examine witnesses.
  - (4) The presiding officer or any Commissioner may ask questions of all parties.
- (c) **Objections and motions.** The presiding officer shall rule on the admissibility of evidence and objections to evidence, and shall rule on motions or objections raised in the course of the hearing. In the exercise of this function, the Commission or officer may rely on the advice of counsel present and serving in an advisory capacity. Any party may object to a ruling which the party considers erroneous, and an exception to such ruling shall be noted of record. Failure to timely object to any alleged error or irregularity shall be deemed as a waiver of such objection.
- (d) **Summary.** The presiding officer shall prepare Findings of Fact and Conclusions of Law. The parties may submit proposed Findings of Fact and Conclusions of Law to the presiding officer to be included in the case record. The presiding officer shall prepare a summary of the case, together with Findings of Fact and Conclusions of Law which shall be presented to the Commission en banc at its next available meeting. The summary, Findings and Conclusions shall be provided to all parties and each shall be given the opportunity to reply, either in writing or orally before the Commission en banc.
- (e) **Negotiated settlement.** The presiding officer may suggest to the parties a proposed settlement of the controversy and may attempt to resolve the controversy by negotiating with the parties prior to termination of the hearing.

#### **765:2-5-9. Failure to appear**

Any party who fails to appear as directed, after having received proper notice, may be determined to have waived his/her right to present his/her position in the controversy and the Commission may take such action as it deems appropriate under the circumstances, including dismissal of the Complaint and/or assessment of costs.

#### **765:2-5-10. Subpoenas**

- (a) **Witnesses.** Subpoenas for the attendance of witnesses, and/or for the furnishing of information required by the Commission, and/or for the production of evidence or records of

any kind shall be issued by the Executive Director or his designate. Subpoenas shall be served and a return made in any manner prescribed by general civil law.

(b) **Sanctions.** Upon the failure of any person to obey a subpoena, upon the refusal of any witness to be sworn or make an affirmation, or to answer a lawful question put to him/her in the course of the hearing, the Executive Director may institute appropriate judicial proceedings under the laws of the state for an order to compel compliance with the subpoena or the giving of testimony, as the case may be. The hearing shall proceed, so far as it is possible, but the presiding officer or the Commission, in its discretion, at any time may continue the proceedings for such time as may be necessary to secure a final ruling in the compliance proceeding.

#### **765:2-5-11. Depositions**

A party to a proceeding may take the deposition of witnesses, within or without the state, in the same manner as provided by law for the taking of depositions in civil actions in courts of record. The admissibility of a deposition and objections to all or part of a deposition shall be determined by the presiding officer in accordance with rules of evidence provided in the Administrative Procedures Act.

#### **765:2-5-12. Record of hearing**

(a) **Contents of record.** The record in every proceeding shall include the following:

- (1) all pleadings, motions, and intermediate rulings,
- (2) evidence received and considered,
- (3) a statement of matters officially noticed,
- (4) questions and offers of proof, objections and rulings thereon,
- (5) proposed findings and exceptions, and
- (6) any report by the presiding officer,
- (7) the recording of the hearing made by the Commission.

(b) **Recording.**

- (1) A record of the hearing, by means of recording or court reporter's transcript, will be made of all hearings conducted by the Commission or a hearing officer unless the presiding officer designates otherwise.
- (2) The record of the hearing and the file containing the pleadings will be maintained in a place designated by the Executive Director. The recordings of the proceedings shall be maintained for a period of one (1) year.

(c) **Transcript.** A transcript of the proceeding shall not be transcribed except upon written application by any party to the action. The party requesting transcription will bear the cost and will pay a fee according to a schedule established by the Commission. An initial deposit set by the Commission also must be paid by said party.

(d) **Final decision.** All final decisions shall be in writing. A copy of the final decision will be mailed forthwith to each party and to his/her attorney of record.

#### **765:2-5-13. Commissioners to act as arbitrators**

The Commissioners en banc shall act as arbitrators of the controversy. A quorum of the Commissioners may act and decide the controversy if any Commissioners are absent. A decision by a majority of the quorum shall be deemed the decision of the Commission en

banc. The Commission shall be entitled to deliberate upon its decision in Executive Session, following appropriate motion and vote. For purposes of deliberation in Executive Session, said proceeding shall be deemed an individual proceeding for which Executive Sessions are authorized.

#### **765:2-5-14. Decision by the Commission**

The Commission en banc shall review the summary, Findings of Fact and Conclusions of Law prepared by the presiding officer and any summaries or proposed Findings of Fact and Conclusions of Law by any of the parties. Before reaching a decision, the Commission en banc may request additional information from any of the parties or the presiding officer. The Commission may also suggest continued negotiations by the parties to resolve the controversy, or remedies it deems appropriate for the parties to consider as an agreed settlement in lieu of a decision by the Commission. The Commission may vote to accept any negotiated settlement or agreement between the parties made at the initial hearing. In the event the parties cannot agree to a negotiated settlement, the Commission shall decide the matter as it deems fair and just and make an award consistent with its judgment.

#### **765:2-5-15. Awards**

The Commissioners acting as arbitrators shall determine the award due in their judgment. The award shall be in writing and signed by the Commissioners making the award. The award shall be made within thirty (30) days of the arbitration hearing. Notice of the award shall be delivered to the parties either personally or by certified mail, return receipt requested.

#### **765:2-5-16. Costs**

The cost of the arbitration shall be borne by the parties. The costs shall be the actual cost to the Commission of the initial hearing designate and the administrative cost to the Commission incurred in conducting the arbitration. The cost shall be divided among the parties as set forth in their arbitration agreement.