

**TITLE 460: OKLAHOMA DEPARTMENT OF MINES  
CHAPTER 3: NON-COAL RULES OF PRACTICE AND  
PROCEDURES**

**Effective January 2017**



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## CHAPTER 3. NON-COAL RULES OF PRACTICE AND PROCEDURES

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[Authority: 45 O.S., §§ 1.5 et seq., and 721 et seq.; 75 O.S., §§ 250 et seq.]  
 [Source: Codified 12-31-91]

### SUBCHAPTER 1. GENERAL PROVISIONS

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[Source: Codified 7-26-04]

#### 460:3-1-1. Purpose

The purpose of this Chapter is to ensure public access to the administrative legal process and to ensure due process of law to the citizens of the state of Oklahoma.

#### 460:3-1-2. Description of organization

- (a) The office of Chief Inspector of Mines, Oil and Gas (hereinafter referred to as the Department) was created and exists by virtue of Article 6, Section 25 of the Constitution of the State of Oklahoma, as amended.
- (b) The Chief Executive Officer is the Chief Mine Inspector, who is appointed by the Governor by and with the consent of the Senate for terms of four (4) years to run concurrently with the term of the Governor [Article VI, Sec. 1, Oklahoma Constitution, as amended.]
- (c) The Chief Mine Inspector shall perform all administrative duties required of said office under the direction of the Governor and shall perform all duties and shall have such authority as is vested in the Chief Mine Inspector by the provisions of Title 45 of the Oklahoma Statutes.
- (d) Mining districts are created by the Chief Mine Inspector for the Assistant Mine Inspectors to fulfill their duties of inspection and enforcement. Copies of maps showing the boundaries of the mining districts of this Chapter are available to the public upon request to the Department. [45 O.S. Supp (1981), Sec. 21.1]
- (e) In the absence of an appointed Chief Mine Inspector, the Chief Executive Officer of the Department of Mines shall be the Director of the Department of Mines. The Director shall be appointed by the Oklahoma Mining Commission and shall serve at the pleasure of said Commission which shall fix the Director's duties and compensation. The Director shall be chosen

with regard to his or her knowledge, training, experience and ability in administering the functions of the Department. The appointed Director shall have been a resident and a qualified elector of Oklahoma for a period of at least three (3) years preceding the appointment. [45 O.S. § 1b].

[Source: Amended at 31 Ok Reg 2084, eff 9-12-14]

#### 460:3-1-3. Method of operation

- (a) The principal office of the Department is. 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.
- (b) Office hours shall be from 8:00 A.M. to 4:30 P.M., unless otherwise designated by the Director of the Department of Mines, each day except Saturday and Sunday and legal holidays established by statute or proclamation of the Governor.
- (c) The Department of Mines may exercise its official powers at any location in the State of Oklahoma.
- (d) Every communication in writing to the Department shall be addressed to the Director at the principal office.
- (e) All rules and other written statements of policy or interpretations formulated, adopted or used by the Department in the discharge of its functions, all final orders, decisions and opinions and all forms, applications and instructions which are required to be completed in applying for a license or permit will be made available at the principal office during regular office hours.
- (f) Copies of all official records of the Department, not privileged or protected from publication by law, may be made and certified by the Director on the request of any person. The person making such request shall pay the expense of making such copies in accordance with a fee schedule adopted by the Department. Certified copies of any records or papers on file in the Department shall be evidence equally with the originals thereof and when introduced as evidence shall have the same validity as the originals.
- (h) When computing time, the following shall apply:
  - (1) Except as otherwise provided, computation of time is based on calendar days.
  - (2) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday or legal holiday on which the Department is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

(3) Intermediate Saturdays, Sundays and legal holidays are excluded from the computation when the period or prescribed time is seven (7) days or less.

[Source: Amended at 31 Ok Reg 2084, eff 9-12-14]

#### **460:3-1-4. Petition requesting promulgation, amendment or repeal of a rule or organization**

(a) Any interested person may petition the Department requesting the promulgation, amendment, or repeal of a Department rule, provided, in submitting such petition, the following requirements shall apply:

- (1) All petitions must be submitted in typewritten or legible printed form.
- (2) All petitions must clearly identify the party(s) submitting such petition and must include a statement reflecting the interest of the party(s) in submitting such petition, i.e., a showing that such petition is being submitted by an "interested person."
- (3) All petitions must clearly state that the petition is for the promulgation of a new rule, for the amendment of an existing rule or for the repeal of an existing rule, or, separately, any combination of the above. In the instance of a requested amendment to an existing rule(s), a complete text of the existing rule language requested for change or deletion and/or such language as may be requested to be added must be specified. In the instance of a requested repeal of any rule(s), the petition must state the complete rule(s) requested for repeal.
- (4) All petitions must clearly and separately state the factual basis and reasons, legal grounds and technical justification for each requested rule promulgation, amendment or repeal and shall indicate whether petitioner desires a public hearing. Any and all supporting documents, records, statistics, studies or information must be submitted with the petition.
- (5) All petitions must be duly signed and endorsed by all petitioning parties, or their legal representatives, and such signatures and endorsement must be duly acknowledged by notary.

(b) All petitions requesting the promulgation, amendment or repeal of any Department rule shall be referred to the Department for review and consideration. The Department shall initially determine if the submitted petition is in adequate and proper form. If determined not to be in proper and adequate form, the Department shall thereupon return said petition to the petitioning party for correction and resubmission.

(c) Upon receipt of the petition, the Director shall determine if the petition sets forth facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a regulation. Facts, technical justification, or law previously considered in a petition for rulemaking on the same issue shall not provide a reasonable basis. If the Director determines that the petition has a reasonable basis, a notice shall be mailed to all mine operators and other interested persons, and shall be published in the The Daily Oklahoman and/or The Tulsa World seeking comments from the public

on the proposed change. The Department may hold a public hearing, may conduct an investigation or take other action to determine whether the petition should be granted.

(d) Before making any final determination, the requesting party shall be allowed reasonable opportunity for argument, written and/or oral, in support of the petition before the Department. In making its final determination on the petition, the Department may, in its discretion, resort to either of the following nonexclusive actions or proceedings (or any combination thereof):

- (1) For good and sufficient cause, summarily grant or deny the petition; or
- (2) Refer the request to staff for additional review, consideration and recommendation prior to a determination thereon by the Department.

(e) Within 90 days from receipt of the petition, the Department shall issue a written decision either granting or denying the petition. The Director's decision shall constitute the final decision for the Department.

- (1) If the petition is granted, the Director shall initiate a rulemaking proceeding.
- (2) If the petition is denied, the Department shall notify the petitioner in writing, setting forth the reasons for denial.

(f) Should any petition be granted by the Department, in whole or in part, the petition as granted shall thereafter be treated as in the case of all rulemaking and the procedures of the Administrative Procedures Act shall thereupon become applicable in the further adoption of such rule promulgation, amendment or repeal.

[Source: Amended at 31 Ok Reg 2084, eff 9-12-14]

#### **460:3-1-5. Conducting hearings for formal review**

(a) The Department may hold hearings for formal review on any matter within the Department's jurisdiction. Hearings for formal review may be instituted and conducted where expressly required by law and where deemed necessary to the proper execution and discharge of any of the powers or duties conferred or imposed upon the Department by law. Hearings may be instituted by application, petition, complaint (herein generally and collectively referred to as "application") or similar request of an aggrieved person or by the Department on its own initiative.

(b) All hearings for formal review held under the authority of 45 O.S., Section 721 et seq., shall be in compliance with 75 O.S., Section 301 et seq., as amended, and with this Chapter.

(c) Hearings for formal review shall be conducted by an authorized Hearing Examiner who shall be designated by the Director. Hearing Examiners are authorized to issue subpoenas, administer oaths, to supervise, direct, preside over and conduct the hearing proceedings; to make and enter interlocutory rulings; to make and enter rulings on any other motions or objections arising during the course of the hearings; and, generally to do all things necessary and incidental to conducting and completing the hearing.

(d) Hearings for formal review may be held at the main offices of the Department in Oklahoma City, or at such other locations as may be designated by law, rule or regulation.

(e) All testimony and evidence given at hearings for formal review shall be electronically recorded in duplicate. Upon receipt of notice of appeal to the District Court pursuant to the Administrative Procedures Act or upon other proper request of a party of record, the Department shall transcribe the testimony verbatim. The cost of transcribing the hearings and furnishing a certified copy of the record to the District Court shall be borne by the appellant, petitioner or requesting party. When a completed hearing record has been transcribed and certified, a copy of the transcript may be obtained, upon written request, from the Department. There will be a transcription fee, as determined by the Department, payable by the requesting party. [75 O.S., Sections 309, 320].

(f) When deemed necessary and proper for the purposes of a hearing for formal review, pre-hearing discovery by a party may be allowed as provided under the Administrative Procedures Act and this Chapter. Depending upon the nature of the hearing, pre-hearing discovery may be made at any time subsequent to the filing (and acceptance for filing) of an application or petition, or otherwise, at any time subsequent to the institution of proceedings on the application. Requests for pre-hearing discovery must be timely made and the Hearing Examiner may impose reasonable and necessary limitations on the period of time within which discovery requests may be presented and entertained.

(1) In any hearing proceeding, the Hearing Examiner may direct, on the Examiner's own motion, or at the request of a party, that the parties appear for a pre-hearing conference. Parties of record shall be notified of such conferences in advance. A pre-hearing conference may be held to facilitate simplification of issues presented, admissions and stipulations, the identification of documents and witnesses proposed to be offered, discovery and production of relevant documents and other information, to consolidate parties and issues, and any other matters as may aid in the conduct of the hearing.

(2) The Hearing Examiner, on the Examiner's own motion or at the request of a party, may, in the name of the Department, issue subpoenas for witnesses and/or the production of books, records, papers or other information or objects. Subpoenas may be personally served by any authorized Department member or by certified mail, return receipt requested. Subpoenas must be served no less than three (3) days prior to the date of the hearing. [75 O.S., Section 315].

(g) The Hearing Examiner shall open the hearing for formal review at the time and place set forth in the notice.

(1) After opening the hearing for formal review, the Hearing Examiner shall determine whether notice of the hearing was properly given as required by law. Should it be determined that the required notice was not given or is materially, substantially or prejudicially defective in form or content, the Hearing Examiner shall adjourn the hearing, set a new hearing date and a new and proper notice thereof shall be given. In addition to the required

notice, all parties of record shall be given written notice of the new hearing date.

(2) After opening the hearing for formal review, the Hearing Examiner shall request that all parties enter their appearances for the record and whether they are appearing in support of or in opposition to the application. Parties may appear personally, by authorized representative and/or by legal counsel, provided, attorneys appearing as legal counsel for and on behalf of a party must be duly licensed to practice law in the State of Oklahoma or must complete the oath [5 O.S. Section 17.1 and Article II, Section 5 of the Rules of the Oklahoma Bar Association] set forth in Appendix A of this Chapter. The applicant or protestant must appear at the hearings, either personally, by representative or by legal counsel. The failure of any party to appear shall be deemed to constitute a default and abandonment of interest by the party failing to appear and shall preclude the party from being heard further unless good cause for such failure to appear is shown five (5) days from the date of the hearing.

(3) After all parties have entered their appearances, the Hearing Examiner shall proceed to entertain presentation of evidence and testimony. The testimony of a witness shall be taken only upon sworn oath or affirmation. Witnesses shall be sworn individually. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses, to object to the introduction of evidence, to impeach witnesses, and to rebut evidence presented. [75 O.S., Section 310]

(4) As provided under the Administrative Procedures Act, the strict and formal rules of evidence and pleading such as are applied and prevail in a court of law need not be observed in Department hearings for formal review. All evidence and testimony offered must be relevant and material to the matter subject of the application and hearing. Evidence and testimony which is clearly irrelevant, immaterial, incompetent or unduly repetitious or cumulative may be excluded or limited. Evidence may be received by stipulation and agreement of all interested parties. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available and, upon request, a party may be given the opportunity to compare the copy with the original. Copies of proposed exhibits shall be supplied to adverse parties and one original copy submitted to the Hearing Examiner. Each exhibit offered shall be tendered for identification. Each exhibit entered into evidence shall become a part of the administrative record. No exhibit shall be accepted after the conclusion of the hearing.

(5) Files and records of the Department which pertain to the subject of the hearing, and books, reports, and other papers or writings which have been prepared and published by any governmental or public agency, may at the discretion of the Hearing Examiner, be officially noticed and received into evidence as exhibits and incorporated by reference. The original or a copy in the possession of the Department shall be made available for inspection

and copying by any party. Each such matter shall be appropriately identified and designated by number in the record as an exhibit. Certification of such files and records may be waived when it appears there is not valid reason to doubt the authenticity of the document presented. Official notice may also be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the Department's specialized knowledge. [75 O.S., Section 310]

(6) The Hearing Examiner may, at the Examiner's discretion, continue or adjourn a hearing to another date. Hearing continuances may be granted at the request of any party for good cause or by agreement of all parties or may be ordered on motion of the Hearing Examiner. Continuances or adjournments for further hearing shall be to date, time and place certain announced in open session of the hearing. Where granted or ordered prior to the scheduled hearing date, the party at whose request the continuance was granted or ordered shall notify all other interested parties of record of the date, time, and place set by the Hearing Examiner for further hearing. At the conclusion of a hearing, the Hearing Examiner may, at the Examiner's discretion for good cause shown and without prejudice to any party, leave the hearing record open to allow presentation and rebuttal of additional material or information necessary to a full, fair and complete submission and disposition of the matter subject of the hearing.

(7) Upon conclusion of a hearing for formal review, the Hearing Examiner may request that all parties file proposed Finding of Facts and Conclusions of Law for review and consideration by the Hearing Examiner. The Hearing Examiner may request all parties to submit legal briefs. [75 O.S. Section 312]

(8) After all parties have had an opportunity to be heard and present evidence, and after expiration of any additional time allowed, the hearing shall be deemed completed and the hearing record shall be deemed closed.

(9) As expeditiously as possible after completion of the hearing for formal review, the Hearing Examiner shall review, consider and evaluate all matters presented and relevant to the hearing issues, and, based thereon, the Hearing Examiner shall prepare a proposed final Order containing necessary Findings of Facts and Conclusions of law Law. The Examiner's proposed Order shall be presented to the Director of the Department for review, consideration and action. All parties of record shall be furnished a copy of the Examiner's proposed Order, at least 15 days in advance of the final Order of the Director, and may file Exceptions thereto. [75 O.S., Section 311]

(10) At such time as the Examiner's proposed Order is to be considered and acted upon by the Director, no new testimony or evidence may be presented or entertained. Upon request, oral arguments and supporting briefs on the Examiner's proposed Findings of Fact, Conclusions of Law, and Order may be presented, but a reasonable time limit for argument shall be fixed. Oral argument shall be

recorded and shall become a part of the record. All parties of record shall be furnished a copy of the final Findings of Facts, Conclusions of Law, and Order of the Director of the Department. [75 O.S., Section 312]

(11) As allowed by and subject to compliance with the requirements imposed under the Administrative Procedures Act, any party may request rehearing, reopening or reconsideration of any final Department action, decision or Order. The Department may, on its own motion, order rehearing, reopening or reconsideration of any Department action, decision or order. Appeals from any final Department action, decision or ruling, may be taken as allowed and provided by and subject to the requirements of the Administrative Procedures Act. Subject to the provisions of the Administrative Procedures Act and unless otherwise directed or ordered by the Department, no Department action, decision or Order shall be stayed pending rehearing, reopening, reconsideration or appeal. [75 O.S., Sections 317, 319]

[Source: Amended at 21 Ok Reg 2973, eff 7-26-04; Amended at 29 Ok Reg 1778, eff 8-12-12; Amended at 31 Ok Reg 2084, eff 9-12-14]

#### **460:3-1-6. Requests for declaratory rulings**

(a) Any person may request the Director to interpret the applicability of any rule or order of Department by requesting a declaratory ruling. The purpose of a declaratory ruling is to explain, or clarify, a rule or an order of the Director in relation to a particular situation. A request for a declaratory ruling must be in writing, and it must include the following information.

- (1) The name, address and telephone number of the person making the request;
- (2) The name, address and telephone number of the organization the person represents, if applicable;
- (3) The date of the request;
- (4) A description of the problem or issue which is in the reason for the request; and
- (5) The numbers and headings used to identify the rule or order on which the ruling is sought.

(b) The Director may deny the request if it is repetitive, concerns a matter that in the Director's judgment is inappropriate for a declaratory ruling, or concerns a matter beyond the Director's authority.

(c) The Director may provide others with written notice of the request for a declaratory ruling and give them an opportunity to respond in writing within 15 days.

(d) The Director shall issue a declaratory ruling within a reasonable time after the request is received by Department.

(e) A declaratory ruling or refusal to issue such ruling shall be subject to judicial review in the same manner as provided by Department rules.

[Source: Added at 17 Ok Reg 3169, eff 7-28-00]

### **SUBCHAPTER 3. [RESERVED]**

## SUBCHAPTER 5. PROCEEDING FOR SUSPENSION OR REVOCATION OF PERMITS UNDER THE MINING LANDS RECLAMATION ACT

### Section

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[Source: Codified 7-26-04]

### 460:3-5-1. Scope

This Subchapter sets forth the procedures for obtaining formal administrative review of the Department's Order to Show Cause to suspend or revoke a permit pursuant to 45 O.S. Section 728(D), 732(b), and 736.

[Source: Added at 21 Ok Reg 2973, eff 7-26-04]

### 460:3-5-2. Initiation of proceedings

(a) The Department shall determine if a permit shall be suspended or revoked for failure to comply with the Act, the permit, or the mining requirements and shall issue a Show Cause Order as to why the subject permit should not be suspended or revoked.

(b) A Show Cause Order shall set forth:

- (1) A list of the violations upon which said Show Cause Order is based;
- (2) A copy of each notice or order which contains one or more of the violations upon which the said Show Cause Order is based;
- (3) A Finding as to whether the permit should be suspended or revoked, including the length and terms of suspension.

(c) The Department shall notify the permittee and other interested parties of said Show Cause Order.

[Source: Added at 21 Ok Reg 2973, eff 7-26-04]

### 460:3-5-3. Answer

The permittee shall have 20 days from receipt of a Show Cause Order issued pursuant to this Subchapter in which to file an answer with the Department.

[Source: Added at 21 Ok Reg 2973, eff 7-26-04]

### 460:3-5-4. Content of answer

The permittee's answer to a Show Cause Order shall contain a statement setting forth:

- (1) The reasons, in detail, why the Department should not suspend or revoke said permit and all reasons for contesting said order, including the permittee's dispute of all fact of the violations alleged by the Department;
- (2) All mitigating factors the permittee believes exist in determining the Department's basis for revocation or suspension, or the terms of suspension;
- (3) Any other alleged relevant facts; and
- (4) Whether a hearing on the Show Cause Order is desired.

[Source: Added at 21 Ok Reg 2973, eff 7-26-04]

### 460:3-5-5. Burden of proof in suspension or revocation

In proceeding to suspend or revoke a permit under this Subchapter, the Department shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

[Source: Added at 21 Ok Reg 2973, eff 7-26-04]

### 460:3-5-6. Determination by the hearing examiner

(a) Upon a determination by the hearing examiner that a permit shall be revoked or suspended, the hearing examiner shall order the permit either suspended or revoked. In making such a determination, the hearing examiner need not find that all the violations listed in the Show Cause Order occurred, but only that sufficient violations occurred to establish the basis for suspension or revocation.

(b) If the permit is suspended, the amount of time for which the permit is suspended shall be determined by the Department as contained within the Show Cause Order. A suspension of indefinite period may be imposed by the hearing examiner as contained within the Show Cause Order, so long as such suspension furthers the purpose of the Act.

(c) The decision of the hearing examiner shall be issued within a reasonable time frame following the date the hearing record is closed by the hearing examiner or within 20 days of receipt of the answer, if no hearing is requested.

(d) At any stage of a suspension or revocation proceeding being conducted by a hearing examiner, the parties may enter into a settlement agreement, subject to the approval of the Director.

[Source: Added at 21 Ok Reg 2973, eff 7-26-04]

### 460:3-5-7. Summary disposition

(a) In a proceeding for suspension or revocation of a permit under this Subchapter, where the permittee fails to appear at a hearing, the permittee shall be deemed to have waived its rights to a hearing and the hearing examiner may assume for the purpose of the proceeding that:

- (1) Each violation listed in the Show Cause Order occurred;
- (2) Such violations were caused by the permittee; and

(3) Nothing herein shall authorize a permittee to dispute the fact of the violations and orders contained within the Show Cause Order, so long as said violations or orders have become final.

[Source: Added at 21 Ok Reg 2973, eff 7-26-04]

Director in accordance with judicial review pursuant to the Oklahoma Administrative Procedures Act, 75 O.S. Section 308, et seq.

[Source: Added at 21 Ok Reg 2973, eff 7-26-04]

#### **460:3-5-8. Appeals**

Any party to a proceeding for suspension or revocation of a permit under this Subchapter, may appeal the final order of the

**APPENDIX A. MOTION FOR LIMITED ADMISSION TO PRACTICE THIS  
ADMINISTRATIVE HEARING [REVOKED]**

[Source: Revoked at 29 Ok Reg 1778, eff 8-12-12]