

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 285. LODGING ESTABLISHMENTS**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Chapter 285. Lodging Establishments [AMENDED]

SUMMARY:

Chapter 285 is being amended to conform the rules to statutory amendments made to 63 O.S. § 1-1201et seq. by HB1635. Lodging establishment, as now defined in OAC 310:285-1-2, requires five (5) rooms available for transient guests, instead of the four (4) rooms for transient guests previously required for an establishment to be within the definition. OAC 310:285-3-1(a), as amended, removes the regulation of hotel buildings and their appurtenances from the authority of the State Commissioner of Health.

AUTHORITY:

Commissioner of Health, Title 63 O.S. §§ 1-104, 1-1201et seq.; HB1635

COMMENT PERIOD:

October 16, 2023 through the close of the Department's normal business hours, 5 PM, on November 17, 2023. 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 November 17, 2023 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 November 17, 2023 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 November 20, 2023 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 November 17, 2023, 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.

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 285. LODGING ESTABLISHMENTS**

1. DESCRIPTION:

Chapter 285 is being amended to conform the rules to statutory amendments made to 63 O.S. § 1-1201 et seq by HB1635. Lodging establishment, as now defined in OAC 310:285-1-2, requires five (5) rooms available for transient guests instead of the four (4) rooms for transient guests previously required for an establishment to be within the definition. OAC 310:285-3-1(a), as amended, removes the regulation of hotel buildings and their appurtenances from the authority of the State Commissioner of Health.

2. DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:

Persons affected will be proprietors of lodging establishments with four rooms available for transient guests which will no longer be within the definition of lodging establishment and will thereby be relieved of any regulatory burden imposed by licensing by the Department. Although the Department no longer has regulatory authority over hotel buildings and appurtenances, the hotel buildings will otherwise be subject to regulation by a different state agency and the Department's general regulatory authority over public health issues in hotels remains. The cost impact to licensees and the Department is minimal.

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

Owners of small lodging enterprises benefit from fewer regulations. The public benefits from the Department's ability to focus its resources on those businesses that are more likely to have a greater impact on public health.

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

There are no fee changes. There will be a very small impact for businesses that will no longer need a lodging establishment license because they only have four rooms available for transient guests. The economic impact on the Department is negligible.

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

The Department does not anticipate incurring any additional costs. The statutory amendments will enable the Department to utilize resources it used to enforce the previous lodging establishment rules for other compliance and enforcement activities.

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 RULE:**

There are no less costly means currently identified.

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

There will be a positive effect on public health and safety resulting from the Department's ability to direct its resources to more pressing public health issues.

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

These changes to the Department's rules are required by the changes made to the statutes from which the Department gets its authority to regulate lodging authorities. If the proposed rule amendments are not adopted, the Department is still bound to implement the terms of the statutory changes.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on September 11, 2023.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 285. LODGING ESTABLISHMENTS**

SUBCHAPTER 1. GENERAL PROVISIONS

310:285-1-2. Definitions

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

"Bedding" means mattresses, sleeper sofas, mattress covers, mattress pads, bedskirts, quilts, blankets, sheets, pillows, pillow cases, comforters and spreads.

"Cabin" means a single structure where sleeping accommodations are furnished to the transient, traveling, or vacationing public. A group of less than four (4) cabins, at the same location and under the same ownership shall be exempt from this chapter.

"Certified applicator" means any individual who is certified under 7 U.S.C., Section 136(e)(1) or by the Oklahoma State Department of Agriculture Food and Forestry as authorized to use or supervise the use of any pesticide that is classified for restricted use. Any applicator who holds or applies registered pesticides or uses dilutions of registered pesticides consistent with the product labeling only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served is not deemed to be a seller or distributor of pesticides.

"Clean" means free of visible stains, dirt, dust, sludge, foam, slime (including algae and fungi), mold, rust, scale, mineral deposits, accumulation of impurities, food debris, and other foreign material.

"Commissioner" means the State Commissioner of Health and authorized representatives or designated agents thereof.

"Continental breakfast" means a morning meal consisting of no more than the food items described in OAC 310:285-5-6(a) and this Chapter, or an authorized agent thereof.

"Department" means the Oklahoma State Department of Health and a health department designated in writing by the State Commissioner of Health to perform official duties or other acts authorized under 63 O.S. § 1- 101 et seq.

"Employee" means the permit holder, individuals having supervisory or management duties and any other person working in a lodging establishment whose duties include the cleaning of rooms, toilets, linens, utensils, or any part of the building or the rendering of any service to guests.

"EPA-registered" means any chemical or substances, including sanitizers, sterilizers, biocides, or other substances which must be registered with the United States Environmental Protection Agency under 7 U.S.C. § 136 et seq. prior to their distribution and use by industry and consumers.

"Food" means any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

"Guest room" means any room in a lodging establishment which is offered for occupancy on a daily basis or for a period of less than thirty (30) days.

"Housekeeper's cart" means a vehicle which is used to transport cleaning materials, room supplies, clean and soiled linens and refuse.

"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury.

"Infestation" means the presence of vermin, which includes but is not limited to bed bugs, cockroaches, or rodents, which is indicated by observation of living or dead vermin or vermin carapace, eggs or egg casings, or the typical brownish or blood spotting on linens, mattresses, or furniture, or the presence of vermin droppings.

"Kitchenette" means a room or area within a single guest room of a lodging establishment that has the following amenities:

- (A) A kitchen sink supplied with hot and cold potable water;
- (B) Properly vented cooking facilities such as a microwave oven, convection oven, or stove;
- (C) An easily cleanable, non-porous counter for food preparation;
- (D) A refrigerator capable of holding 41°F or less; and
- (E) A cupboard or other kitchen cabinetry.

"Law" means state statutes and rules.

"Lodging establishment" means and includes any hotel, motel, tourist court, apartment house, rooming house or other place where sleeping accommodations are furnished or offered for pay for transient guests, if ~~four (4)~~ five (5) or more rooms are available therein for transient guests.

"Person" means any individual, partnership, corporation, association, or other legal entity.

"Person in charge" means the individual present in a lodging establishment who is the supervisor of the lodging establishment at the time of inspection. If no individual is the supervisor, then any employee present is the person in charge.

"Physical facilities" means the structure and interior surfaces of a lodging establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

"Potable water" means water which is safe for human consumption in that it is free from impurities in amounts sufficient to cause disease or harmful physiological effects and, for the purpose of this definition, approved by the Department of Environmental Quality prior to serving to the general public.

"Premises" means the physical establishment, its contents, and the contiguous land or property under the control of the license holder which operated as a single business.

"Putrescible" means capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors or gases.

"Ready-to-eat food" means a food product that is intended to be consumed without any further preparation or cooking processes.

"Regulatory authority" means a representative, such as an onsite inspector, of the Department.

"Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175, pesticides classified for restricted use, and pesticides limited to use by or under the direct supervision of a certified applicator.

"Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens to a safe level as determined by applicable state and federal requirements on utensils and equipment.

"Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

"Single-service articles" means cups, containers, lids, closures, knives, forks, spoons, stirrers, paddles, straws, wrapping materials, and similar utensils intended to be discarded after one use.

"Substantial compliance" means a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

"Time/Temperature Control for Safety Food" means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

(A) Time/Temperature Control for Safety Food includes: An animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth or toxin formation; and

(B) Time/Temperature Control for Safety Food does not include:

- (i) An air-cooled hard-boiled egg with shell intact, or a shell egg that is not hard-boiled, but has been pasteurized to destroy all viable Salmonellae;
- (ii) A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;
- (iii) A food that because of its aW or pH values, is designated as a non-TCS food.

"**Utensil**" means any multi-use or single service implement used in the storage, preparation, transportation, or service of ice, beverage, or other food.

"**Variance**" means a written document issued by the Department that authorizes a modification or waiver of one or more requirements of this Chapter, if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver.

SUBCHAPTER 3. ESTABLISHMENT MAINTENANCE

310:285-3-1. Establishment maintenance

(a) All buildings and appurtenances used in the operation of any lodging establishment, excluding the buildings and appurtenances of hotels as defined in 63 O.S. § 1-1201(A), shall be maintained as necessary to safeguard the health, comfort and safety of guests accommodated therein. Hotels remain subject to the Department's rules governing *cleanliness and bactericidal treatment of equipment and utensils; cleanliness and hygiene of personnel; toilet facilities; disposal of wastes; water supply; and any other items deemed necessary to safeguard the health, comfort and safety of guests accommodated therein.* [63 O.S. § 1-1201(A)]

(b) The floors in areas used for washing and sanitizing multiuse utensils, laundry areas, kitchenettes, and in areas in restrooms, which are next to the tub, shower, or toilet, shall be constructed of smooth, durable, nonabsorbent, and easily cleanable material.

(c) All floors, walls, ceilings, equipment, and other appurtenances in hallways, common areas, and foodservice areas shall be maintained clean and in good repair.

(d) Studs, joists, rafters, and beams shall not be left exposed in restrooms, laundry rooms, or kitchenettes. If left exposed in other areas, these structural members shall be suitably finished and be kept clean and in good repair.