

**TITLE 365. INSURANCE DEPARTMENT  
CHAPTER 25. OTHER LICENSEES**

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 7.	Companies
Part 15.	Company Supervision [NEW]
365:25-7-80.	Purpose [NEW]
365:25-7-81.	Definitions [NEW]
365:25-7-82.	Authorization [NEW]
365:25-7-83.	Professional confidentiality [NEW]
365:25-7-84.	Passing on of confidential information [NEW]
365:25-7-85.	Agreements for information exchange [NEW]
365:25-7-86.	Supervisory Colleges [NEW]
Appendix BB.	Written Confirmation Statement [NEW]

**AUTHORITY:**

Insurance Commissioner, 36 O.S. § 307.1

**DATES:**

**Adoption:**

April 22, 2016

**Effective:**

Immediately upon approval by the Governor

**Expiration:**

Effective through September 14, 2017, unless superseded by another rule or disapproved by the Legislature

**SUPERSEDED EMERGENCY RULES:**

n/a

**INCORPORATION BY REFERENCE:**

n/a

**FINDING OF EMERGENCY:**

The rules are necessary to allow the Insurance Commissioner and staff to participate in several upcoming Supervisory Colleges scheduled for June 2016, July 2016, and January 2017. Participation is essential to monitoring the activities of large insurance holding companies that do business in our state but also have international operations. Oklahoma consumers will be harmed by not having their state representatives present for these important regulatory summits.

**ANALYSIS:**

365:25-7-80 sets out the purpose of the new Part 15, which is to specify the confidential status and handling of certain information contained in the files of the Insurance Commissioner pursuant to various provisions of the Oklahoma Insurance Code (36 O.S. §§ 101-7301). Section 81 provides definitions to the terms “confidential information,” “exchange,” and “supervisory” used in the Part. Section 82 outlines the authorization for the Commissioner to promulgate these new rules. Section 83 establishes the guidelines for the protection of confidential information by the Commissioner, Department staff, and anyone else acting on behalf of the Commissioner or the Department. Section 84 sets out the procedure for passing on confidential information to

other regulators. Section 85 allows for regulators to enter into agreements to facilitate the efficient execution of requests for or provisions of information. Section 86 provides guidelines for the exchange of confidential information through participation in a Supervisory College. Appendix BB is a written statement confirming that an organization will comply with the terms of the rules.

**CONTACT PERSON:**

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S. SECTION 253(F):**

**SUBCHAPTER 7. COMPANIES**

**PART 15. COMPANY SUPERVISION**

**365:25-7-80. Purpose**

This Part is intended to specify the confidential status and handling of certain information contained in the files of the Insurance Commissioner ("Commissioner") pursuant to various provisions of the Oklahoma Insurance Code (36 O.S. §§ 101-7301).

**365:25-7-81. Definitions**

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

"**Confidential information**" means all documents, materials, or other information in the possession or control of the Oklahoma Insurance Department ("Department") pursuant to the Oklahoma Insurance Holding Company System Regulatory Act, 36 O.S. §§ 1657.1 et seq., and investigatory files, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the Commissioner or any other person in the course of an examination made under Sections 309.1 through 309.7 of Title 36 of the Oklahoma Statutes, or in the course of analysis by the Commissioner of the financial condition or market conduct of any person or company.

"**Exchange**" means sending or receiving information to or from any other Regulator charged with supervision of an insurer or its affiliates, including other state, federal, and international regulatory agencies.

"**Supervisory**" means those duties of the Commissioner involving the financial condition and solvency of any person or entity engaged, directly or through others, in the business of insurance.

**365:25-7-82. Authorization**

(a) The Commissioner is authorized to enter into agreements in accordance with Sections 1656.1 and 1657.1 of Title 36 of the Oklahoma Statutes, providing the basis for cooperation between the Commissioner and other regulatory agencies.

(b) Pursuant to various provisions of Title 36, the Commissioner has the legal authority and power to obtain, hold, and exchange certain confidential information in respect to individuals,

legal entities, and groups, including the relevant non-regulated entities of such groups when:

(1) the Commissioner considers the information to be necessary for the supervision of insurance legal entities or groups, or when another Regulator considers the information to be necessary, and

(2) the Commissioner is reasonably requested to provide relevant information by another Regulator.

(c) Information necessary for the supervision of insurance legal entities or groups may include, but is not limited to:

(1) Information on the management and operational systems and controls operated by insurers;

(2) Financial data relating to an insurer and its affiliates;

(3) Information concerning individuals holding positions of responsibility in insurers (to include owners, shareholders, directors, managers, employees, or contractors);

(4) Information concerning individuals or insurers involved, or suspected of being involved, in criminal activities;

(5) Information arising from or developed as part of regulatory investigations and reviews, and on any restrictions imposed on the business activities of insurers;

(6) Information requested and gathered from a supervised entity (including appropriate customer transactional information);

(7) Information reported within supervisory groups to meet group supervisory requirements;

(8) Information on a supervised entity and affiliates including, but not limited to, branches, subsidiaries, and non-regulated holding companies; and

(9) Information on prospective and actual insurer transactions and prospective and actual transactions of policyholders.

### **365:25-7-83. Professional confidentiality**

(a) The Commissioner, including the staff of the Department and any individual acting on its behalf (presently or in the past), are required, as a condition of employment or contract, respectively, to protect confidential information in the possession of the Commissioner or the Department, including confidential information received from other Regulators. Wrongful disclosure of confidential information is grounds for termination of employment or termination of contract, as applicable. In addition, any person failing to maintain confidentiality shall be guilty of a misdemeanor pursuant to 36 O.S. § 117.

(b) The Commissioner shall deny any request for confidential information, other than when required by law, or when requested by another Regulator who has a legitimate supervisory interest and the ability to uphold the confidentiality of the requested information.

(c) The exchange of confidential information shall serve no other purposes than those directly related to the fulfillment of a supervisory function.

(d) The Commissioner has a legitimate interest and a valid purpose related to the fulfillment of supervisory functions in seeking information from another Regulator.

(e) Valid purposes may include, but are not limited to:

(1) Licensing;

(2) Competence, experience, and integrity criteria;

(3) Ongoing supervision, including enforcement action and sanctions;

(4) Supervisory practices;

- (5) Winding-up, liquidation, or bankruptcy;
- (6) Anti-money laundering or combating the financing of terrorism ("AML/CFT").
- (f) All Department personnel and contractors, gaining access to confidential information in the course of their duties, are bound by an obligation of professional confidentiality.
- (g) The "obligation of professional confidentiality" means that, as a basic rule, confidential information received by the Department shall not be divulged to any person or authority whatsoever, except as provided by law.
- (h) The professional confidentiality requirements apply to any person currently or previously employed by or acting on behalf of the Commissioner or the Department.
- (i) Confidential information originating from another Regulator must remain subject to equivalent confidentiality protections provided by this Part. Before passing on confidential information to another Regulator, the Commissioner must ascertain that the person receiving the information is bound by professional confidentiality rules or laws substantially similar and equivalent to subsection "A" of Section 1657.1 of Title 36 of the Oklahoma Statutes and who have agreed in writing not to disclose such information.

**365:25-7-84. Passing on of confidential information**

- (a) Any passing on of confidential information, including information that shall be forwarded by way of official reporting, necessitates prior explicit agreement of the Regulator from whom the information originates and must be subject to agreement, in particular regarding the purpose for which the information shall be used.
- (b) Requests from other Regulators for passing on of confidential information shall be decided on a case-by-case basis by the Commissioner.
- (c) Without prejudice to the foregoing, the Commissioner may pass on information where it will assist:
  - (1) Other Regulators in the fulfillment of their supervisory functions; and
  - (2) Governmental agencies, competent in the financial services field (including central banks), law enforcement agencies, and relevant courts in the performance of their duties.

**365:25-7-85. Agreements for information exchange**

- (a) Agreements may be used to establish a framework between Regulators to facilitate the efficient execution of requests for or provision of information.
- (b) Compliance with the strict confidentiality regime, set forth in Section 1657.1 of Title 36 of the Oklahoma Statutes and this Part, is a key prerequisite for the exchange of confidential information. Every agreement to exchange such information shall include a written confirmation statement in substantially the same terms as that found in the Written Confirmation Statement in Appendix BB of this Chapter, and the agreement shall be signed by an appropriate managerial representative of the Regulator.

**365:25-7-86. Supervisory Colleges**

- (a) Information exchange is particularly important for the operation of a Supervisory College as provided by 36 O.S. § 1656.1. The effectiveness of a Supervisory College depends upon the mutual trust and confidence between participating Regulators, particularly in relation to exchange and protection of confidential information.
- (b) In connection with the exchange of confidential information between the Commissioner and a Supervisory College, appropriate information exchange agreements must be in place prior to

exchange of such information.

(c) Where confidential information exchanged within a Supervisory College is also communicated to other Regulators, there shall be a formal mechanism in place with these Regulators to ensure the protection of the confidential information.

(d) The Commissioner shall inform any other Regulator in its jurisdiction and the Regulators of insurance group entities in other jurisdictions in advance of taking any action that might reasonably be considered to affect those group entities. Where prior notification is not possible, the Commissioner shall inform other relevant Regulators as soon as possible after taking action.

(e) The Commissioner shall proactively exchange material and relevant information with other Regulators. Relevant proactively provided information includes but is not limited to:

(1) Any information the Commissioner considers will facilitate the effective supervision of groups or entities in the group;

(2) Any event or series of events that may have a significant bearing on the operations of group entities operating in the jurisdictions of other Regulators;

(3) Information that may affect the financial system of another jurisdiction;

(4) Information that may affect the financial condition or other interests of the policyholders of a group entity in another jurisdiction; and

(5) Prior notification to another Regulator of any action to be undertaken which relies on information received from that Regulator, subject to requirements applicable to criminal statutes and other similar laws.

(f) In deciding whether and to what extent to fulfill a request by another Regulator for information, the Commissioner may take into account matters such as, but not limited to:

(1) Whether it would be contrary to the essential interest of Oklahoma;

(2) The existence of a requisite written agreement between the Commissioner and the requesting Regulator to maintain the confidentiality of any information exchanged;

(3) The nature of the information to be exchanged;

(4) The use to which the information will be put.

(g) Requests for information shall be made in writing.

(h) When exchanging relevant information and in responding to requests from Regulators seeking information, the Commissioner shall respond in a timely and comprehensive manner. Strict reciprocity in terms of the level, format and detailed characteristics of information exchanged shall not be required by the Commissioner. The originating Regulator may attach conditions to the subsequent exchange of the information to other Regulators. Conditions imposed by the originating Regulator on the exchange of information should not prevent the receiving Regulator from being able to use the information for its own purposes

(i) Before exchanging confidential information, the Commissioner shall ensure that the party receiving the information is bound by confidentiality requirements.

(j) The Commissioner shall generally permit the information that he or she exchanges with another Regulator to be passed on to other relevant Regulators, provided the necessary confidentiality requirements are in place.

(k) When the Commissioner receives confidential information from another Regulator, the information shall only be used for the purposes specified when the information was requested. Before using such information for another purpose, including exchanging it with other parties, the Commissioner shall obtain the agreement of the originating Regulator.

(l) In the event that the Commissioner is legally compelled to disclose confidential information received from another Regulator, the Commissioner shall promptly notify the originating

Regulator, indicating what information he or she is being compelled to release and the circumstances surrounding the release. Where consent to passing this information on is not given, the Commissioner shall use all reasonable means to resist the demand and to protect the confidentiality of the information.

**APPENDIX BB. WRITTEN CONFIRMATION STATEMENT [NEW]**

I confirm, on behalf of \_\_\_\_\_ [ organization] \_\_\_\_\_, that:

- information to be disclosed to us will be subject to confidentiality provisions equivalent to the professional confidentiality mandate set forth in Part 15 of Subchapter 7 of Chapter 25 of Title 365 of the Oklahoma Administrative Code; and
- we will notify all signatories to this agreement and any supervisory organization composed of Regulators of any changes in the guarantees of professional confidentiality applied to such information which could affect the assessment of the equivalence of these guarantees according to the confidentiality regime set forth in this Regulation.

I also confirm, on behalf of my organization, that in relation to information disclosed by another Regulator:

- we will obtain the prior consent of the Regulator from whom the information originated before voluntarily passing on such information to another Regulator; and
- we will, as far as practicable, promptly notify the originating Regulator of any passing on of information or disclosure prescribed by law, and use our best efforts to resist such demand in practice if so requested by that originating Regulator.

\_\_\_\_\_[ORGANIZATION]\_\_\_\_\_

Signature\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

Date:\_\_\_\_\_

## ATTESTATION

I, the undersigned, do hereby attest that the copy enclosed herewith is a true and correct copy of amendments to Title 365, Insurance Department, Chapter 25, Other Licensees, which were considered adopted by the Insurance Commissioner on April 22, 2016, under emergency rulemaking provisions of the Administrative Procedures Act, 75 O.S., Sections 250 et seq.

I, the undersigned, do hereby attest that such rules were adopted in substantial compliance with the Administrative Procedures Act.



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JAMES MILLS

Chief of Staff

Oklahoma Insurance Department

April 22, 2016