

# NOTICE OF PUBLIC RULES HEARING

DATE: Thursday, December 8, 2022  
TIME: 1:30 p.m.  
LOCATION: Via Electronic Teleconference  
CALL-IN INFO: Microsoft Teams meeting

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In accordance with *Chapter 119* of the Revised Code (R.C.), the Director of the Ohio Department of Health announces a Public Hearing at the date and time listed above to hear comments regarding the following action:

**Ohio Revised Code (O.A.C.) Chapter 3701-53 – Alcohol and Drug Testing (OAC 3701-53-01 (rescind & new), 3701-53-02 (rescind & new), 3701-53-03 (rescind & new), 3701-53-04 (rescind & new), 3701-53-05 (rescind & new), 3701-53-06 (rescind & new), 3701-53-07 (rescind & new), 3701-53-08 (rescind & new), 3701-53-09 (rescind & new), 3701-53-10 (rescind & new), and 3701-53-11)**

New Ohio Administrative Code (OAC) 3701-53-01 specifies definitions related to alcohol and drug testing and record retention periods for breath alcohol tests, laboratory tests, certifications and weekly checks, and records of repairs and maintenance.

New OAC 3701-53-02 sets forth standards regarding the description of test results, while new OAC 3701-53-03 authorizes certain devices to be used as breath testing instruments for determining alcohol concentration and sets forth standards for using such devices.

New OAC 3701-53-04 sets forth approved techniques for analyzing alcohol in blood, urine and other bodily fluids or for analyzing controlled substances.

New OAC 3701-53-05 requires instrument checks to be performed on devices used for alcohol and drug testing and sets forth minimum standards and timeframes for performing such checks.

New OAC 3701-53-06 specifies standards for collecting and handling blood samples, urine specimens, and oral fluid specimens.

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New OAC 3701-53-07 sets forth standards for laboratories that conduct alcohol and drug testing, including securely maintaining test result records for three years, maintaining bodily substances for at least one year from testing date, producing a written procedure manual, notifying the Director of Health (Director) if the laboratory director ceases to serve in that capacity, and ensuring that tests are exclusively performed by laboratory technicians or the director using methods of analysis that are specified on the laboratory permit.

New OAC 3701-53-08 specifies qualification requirements for laboratory personnel, including laboratory director permits and technician permits. The rule also requires that senior operators be responsible for the care, maintenance, and certification or instrument checks of evidential breath testing instruments and sets forth minimum standards for such professionals.

New OAC 3701-53-09 authorizes the Director to require laboratory directors, technicians, and senior operators or operators to complete surveys or proficiency examinations at the Director's discretion.

New OAC 3701-53-10 requires individuals serving as laboratory directors, laboratory technicians, senior operators or operators to apply for a permit or operator access card from the Director prior to fulfilling professional duties.

OAC 3701-53-11 authorizes the Director to suspend or revoke the permit or operator access card for various reasons, including obtaining the permit or access card falsely or deceitfully, failing to comply with practice requirements, failing to demonstrate ability to properly operate an instrument for which the permit is held, and others.

The Department proposes to rescind existing OAC 3701-53-01 through OAC 3701-53-10 due to the proposed adoption of the new rules.

## **Information regarding rule package proposed:**

This rule package consists of eleven new rules and ten rescinded rules proposed by the Ohio Department of Health (Department) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on June 17, 2022, and the public comment period was held open through July 17, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on June 17, 2022.

## **Hearing and Contact Information:**

Information about the hearing, people affected by the proposed action may appear via teleconference and be heard or in tandem with an attorney. They may present their positions, arguments, or contentions orally or in writing; may offer witnesses; and may present evidence showing that the proposed rule, if adopted or effectuated, will be unreasonable or unlawful.

To aid in getting the call to be organized and go as smooth as possible, any persons intending to testify on the tele-Public Hearing or planning to observe are encouraged to email [Alicyn.Carrel@odh.ohio.gov](mailto:Alicyn.Carrel@odh.ohio.gov) immediately. Please include in the subject of your email – TESTIFYING IN PUBLIC HEARING and the DATE of the Public Hearing in which you are testifying.

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Copies of the proposed rules will be available on the Register of Ohio website: <http://www.registerofohio.state.oh.us/rules/search> approximately one day after the rule is filed, or from the Office of the General Counsel, Ohio Department of Health (<https://odh.ohio.gov/health-rules-laws-and-forms>)

**Please e-mail any written comments or RSVP if you are planning on testifying to [Alicyn.Carrel@odh.ohio.gov](mailto:Alicyn.Carrel@odh.ohio.gov) by 5:00 p.m. on Tuesday, December 6, 2022.**