

US EPA ARCHIVE DOCUMENT

APPENDIX C - 1987 AMENDMENTS TO ADMINISTRATIVE
PROCEDURES ACT-RULEMAKING PORTIONS
LAW FORTY-FIRST LEGISLATURE

Ch. 207

ADMINISTRATIVE PROCEDURES

CHAPTER 207

H.B.No. 1493

AN ACT RELATING TO STATUTES AND REPORTS AND STATE GOVERNMENT; AMENDING 74 O.S. 1981, SECTION 664, WHICH RELATES TO FILING OF EXECUTIVE ORDERS, SECTION 15, CHAPTER 338, O.S.L. 1982, AS LAST AMENDED BY SECTION 4, CHAPTER 252, O.S.L. 1986 (74 O.S. SUPP. 1986, SECTION 840.15), WHICH RELATES TO EMPLOYMENT LISTS OF ELIGIBLE PERSONS FOR CERTAIN APPOINTMENTS AND 75 O.S. 1981, SECTION 251, AS AMENDED BY SECTION 1, CHAPTER 154, O.S.L. 1984, 252, 253, 254, 255, AS AMENDED BY SECTION 1, CHAPTER 76, O.S.L. 1983, 256, 301, AS LAST AMENDED BY SECTION 11, CHAPTER 196, O.S.L. 1985, 302, 303, AS AMENDED BY SECTION 1, CHAPTER 284, O.S.L. 1982, 304, 305, 306, 307 AND 308, AS AMENDED BY SECTION 1, CHAPTER 18, O.S.L. 1982 (75 O.S. SUPP. 1986, SECTIONS 251, 255, 301, 303 AND 308), WHICH RELATE TO CERTAIN ADMINISTRATIVE PROCEDURES FOR PROMULGATION OF RULES AND REGULATIONS; PROVIDING SHORT TITLE; CREATING THE ADMINISTRATIVE PROCEDURES ACT; PROVIDING LEGISLATIVE INTENT; MODIFYING PROCEDURES FOR FILING OF CERTAIN RULES; REQUIRING CERTAIN FORM AND INFORMATION; PROVIDING FOR POWER AND DUTIES OF THE DIRECTOR OF LIBRARIES; PROVIDING FOR CERTAIN STANDARDS; PROVIDING FOR FILING OF CERTAIN EXECUTIVE ORDERS; PROVIDING PENALTIES; MODIFYING PROCEDURES FOR EMERGENCY RULES; REQUIRING CERTIFICATION; PROVIDING FOR APPEAL; REMOVING CERTAIN POWERS AND DUTIES OF THE SECRETARY OF STATE; PROVIDING FOR CERTAIN TRANSMISSION OF RULES; REQUIRING PUBLICATION; REQUIRING PRESERVATION; PROVIDING FOR PUBLICATION OF THE OKLAHOMA REGISTER; PROVIDING FOR CONTENTS; MODIFYING CERTAIN EFFECTIVE DATE; PROVIDING FOR CERTAIN CHARGES; PROVIDING FOR CERTAIN SUMMARIES; PROVIDING POWERS AND DUTIES OF THE DEPARTMENT OF LIBRARIES; PROVIDING FOR THE OKLAHOMA ADMINISTRATIVE CODE AND SUPPLEMENTS THERETO; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR APPOINTMENT, MEMBERSHIP AND DUTIES OF A TASK FORCE; REQUIRING THE DEPARTMENT OF LIBRARIES TO ASSIST THE TASK FORCE; PROVIDING FOR REIMBURSEMENT; PROVIDING FOR POWERS AND DUTIES OF THE ATTORNEY GENERAL; MODIFYING TERMS; PROVIDING FOR EXEMPTIONS FROM THE ADMINISTRATIVE PROCEDURES ACT; PROVIDING FOR OTHER RULEMAKING AGENCY AUTHORITY; PROHIBITING CERTAIN ACTIONS; PROVIDING NOTICE AND HEARING OF CERTAIN INTENDED ACTIONS; PROVIDING FOR CERTAIN CONTESTS; REQUIRING CERTAIN FILINGS; PROVIDING FOR EFFECTIVE DATE OF CERTAIN RULES; PROVIDING FOR CERTAIN PETITIONS; PROVIDING FOR VALIDITY OF CERTAIN RULES; REQUIRING CERTAIN PROOF; PROVIDING FOR DECLARATORY RULINGS; ESTABLISHING A JOINT LEGISLATIVE COMMITTEE; PROVIDING FOR APPOINTMENT AND DUTIES; REQUIRING CERTAIN REVIEW OF RULES; SPECIFYING PROCEDURES; REQUIRING CERTAIN REPORT AND OTHER INFORMATION; PROVIDING FOR RECOMMENDATION; PROVIDING FOR LEGISLATIVE REVIEW; MODIFYING PROCEDURES; PROVIDING FOR DISAPPROVAL OF RULES BY A JOINT

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RESOLUTION; PROVIDING FOR FINAL APPROVED RULES; PROVIDING FOR VALIDITY AND EFFECTIVENESS OF RULES; REQUIRING THE SECRETARY OF STATE TO TRANSMIT CERTAIN ORDERS TO CERTAIN PERSONS; MODIFYING CERTAIN EMPLOYMENT LISTS FOR CERTAIN APPOINTMENTS; REPEALING 75 O.S. 1981, SECTION 325, AS LAST AMENDED BY SECTION 6, CHAPTER 144, O.S.L. 1986 (75 O.S. SUPP. 1986, SECTION 325), WHICH RELATES TO CERTAIN EXEMPTIONS; PROVIDING FOR RECODIFICATION; AND PROVIDING FOR CODIFICATION.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1.⁷⁵ NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 250 of Title 75, unless there is created a duplication in numbering, reads as follows:

Sections 2 through 23 of this act and Sections 309 through 323 of Title 75 of the Oklahoma Statutes shall be known and may be cited as the "Administrative Procedures Act".

SECTION 2.⁷⁶ NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 250.1 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. The Administrative Procedures Act shall be composed of two Articles. Article I relating to agency filing and publication requirements for rules shall consist of Sections 3 through 23 of this act. Article II relating to agency notice and hearing requirements for individual proceedings shall consist of Sections 309 through 323 of Title 75 of the Oklahoma Statutes.

B. Except as otherwise specifically provided in Section 12 of this act, all agencies shall comply with the provisions of Article I and Article II of the Administrative Procedures Act.

SECTION 3.⁷⁷ NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 250.2 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. Article V of the Oklahoma Constitution vests in the Legislature the power to make laws, and thereby to establish agencies and to designate agency functions, budgets and purposes. Article VI of the Oklahoma Constitution charges the Executive Branch of Government with the responsibility to implement all measures which may be resolved upon by the Legislature.

B. In creating agencies and designating their functions and purposes, the Legislature may delegate rulemaking authority to these agencies to facilitate administration of legislative policy. The delegation of rulemaking authority is intended to eliminate the necessity of establishing every administrative aspect of general public policy by legislation. In so doing, however, the Legislature reserves to itself:

1. The right to retract any delegation of rulemaking authority unless otherwise precluded by the Oklahoma Constitution.

2. The right to establish any aspect of general policy by legislation, notwithstanding any delegation of rulemaking authority.

75. 75 O.S.Supp.1987, § 250.
76. 75 O.S.Supp.1987, § 250.1.

77. 75 O.S.Supp.1987, § 250.2.

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3. The right and responsibility to designate the method for rule promulgation, review and modification.

4. The right to delay, suspend, veto, or amend the implementation of any rule or proposed rule while under review by the Legislature.

SECTION 4. AMENDATORY 75 O.S. 1981, Section 251, as amended by Section 1, Chapter 154, O.S.L. 1984 (75 O.S. Supp. 1986, Section 251), is amended to read as follows:

Section 251. A. 1. Every agency, including any authority, board, commission, department, instrumentality, office, or officer of this state possessing rulemaking powers shall file a certified original and one duplicate copy of all its rules or regulations in force and effect on or before January 2, 1962, with the Secretary of State and a certified original and two duplicate copies with the Director of the Department of Libraries as State Librarian and Archivist on or before January 2, 1962. Thereafter, every agency shall similarly file copies of all new rules or regulations, and all amendments, revisions, or revocations of existing rules or regulations, with the Secretary of State and with the Director within three (3) days of their adoption, excluding holidays, Saturdays, and Sundays. Every each agency shall furnish to the Director on December 31, 1985 a typed original and one duplicate copy thereof, capable of photostatic duplication, of a complete set of its permanent rules and regulations and temporary rules and regulations effective as of December 31, 1985 in such form as is required by the Director or as otherwise provided by law.

2. The Director may promulgate rules to ensure the effective administration of the provisions of this section. The rules may include, but are not limited to, rules prescribing paper size, numbering system, and the format of documents required to be filed pursuant to the provisions of this section or such other requirements as deemed necessary by the Director to implement the provisions of this such section.

B. 1. Each agency shall file three copies of all new rules, and all amendments, revisions or revocations of existing rules attested to by the agency, pursuant to the provisions of Section 254 of this title, with the Director of the Department of Libraries within thirty (30) calendar days after their final adoption.

2. An agency filing rules pursuant to the provisions of this subsection:

- a. shall prepare the rules in plain language which can be easily understood;
- b. shall not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to effectively convey the meaning of a rule interpreting that language, the reference shall clearly indicate the portion of the language which is statutory and the portion which is the agency's amplification or interpretation of that language;
- c. shall indicate whether a rule is new, proposes to amend an existing rule or repeals an existing rule. If a rule proposes to amend an existing rule, the rule shall indicate the language to be deleted typed with a line through the language and language to be inserted typed with the new language underscored;
- d. shall include a reference to any rule requiring a new or revised form in a note to the rule. The Director of the Department of Libraries shall insert that reference

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in The Oklahoma Register as a notation to the affected rule;

- e. shall prepare, in plain language, an analysis of each new or amended rule. The analysis shall include a reference to any statute that the rule interprets, any related statute or any related rule;
- f. may include with its rules, brief notes, illustrations, findings of facts, and references to digests of Supreme Court cases, other court decisions, or Attorney General's opinions, and other explanatory material. Such material may be included if the material is labeled or set forth in a manner which clearly distinguishes it from the rules; and
- g. shall include other information, in such form and in such manner as is required by the Director of the Department of Libraries.

C. The Director is authorized to determine a numbering system and other standardized format for rules to be filed and may refuse to accept for filing and publication any document that does not substantially conform to the promulgated rules of the Department of Libraries.

~~3. The provisions of this section shall not apply to rules or regulations that:~~

~~a. pertain only to an agency's internal operation and organization; or~~

~~b. pertain to proclamations of the Governor; or~~

~~c. concern only the internal management and operation of an institution, including institutions of higher education. Filing rules or regulations pursuant to the provisions of this section does not dispense with the requirements of any other law necessary to make said rules or regulations effective.~~

B. D. In order to avoid unnecessary expense, an agency may use the standards established by organizations and technical societies of recognized national standing by incorporating the standards in its rules or regulations by reference to the specific issue or issues of publications in which the standards are published, without reproducing the standards in full. The publications must standards shall be readily available to the public for examination at the administrative offices of the agency. If any rule or regulation adopts by reference any standards which are published in any documents, pamphlets, publications, specifications, or other materials, then two copies of the documents, pamphlets, publications, or other materials, certified by the adopting agency to be identical with that adopted in the rule or regulation, shall be filed with the Director. The adoption by reference shall not be valid until the copies are filed. The provisions of this section shall not be construed to authorize any adoption by reference that could not have lawfully been adopted by reference prior to January 27, 1962. In addition, a copy of such standards shall be kept and maintained by the agency pursuant to the provisions of the Preservation of Essential Records Act.

E. Pursuant to the provisions of Section 664 of Title 74 of the Oklahoma Statutes the Secretary of State shall transmit to the Director of the Department of Libraries two copies of all Executive Orders upon the signing of such orders by the Governor.

F. The Director of the Department of Libraries may authorize an agency to file rules or the Secretary of State to file Executive

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SECTION 5. AMENDATORY 75 O.S. 1981, Section 252, is amended to read as follows:

~~Section 252. Any rule or regulation, amendment, revision or revocation of an existing rule or regulation made by an agency prior to the effective date of this act shall be void and of no effect unless filed as required by Section 1 of this act and, except to the extent otherwise provided in Section 3 of this act, any~~

A. Any rule or regulation, amendment, revision, or revocation of an existing rule or regulation made by an agency after the effective date of this act September 1, 1987, shall be void and of no effect unless filed and published promulgated as required by Sections 1 and 5 of this act the Administrative Procedures Act. All provisions herein shall also apply to all agencies that may hereafter be created. All courts, boards, commissions, agencies, authorities, instrumentalities, and officers of the State of Oklahoma shall take judicial or official notice of any rule or regulation, amendment, revision, or revocation of an existing rule or regulation filed, or filed and published under promulgated pursuant to the provisions of this act the Administrative Procedures Act.

B. Upon failure of an agency to comply with the provisions of Sections 251 through 256 of this title, the Director of the Department of Libraries shall forward a written notice of the failure to comply to the chief administrative officer of the agency. The notice shall state a reasonable time, not to exceed thirty (30) calendar days, in which the agency shall fully comply. Further failure to comply shall be reported in writing to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Governor, and the Attorney General. Upon such notification, the Attorney General shall immediately seek agency compliance and if required, to institute mandamus proceedings to secure compliance by said agency.

SECTION 6. AMENDATORY 75 O.S. 1981, Section 253, is amended to read as follows:

Section 253. A. If an emergency situation arises and the agency finds that an imminent peril to the preservation of the public peace, health, safety, welfare, or other compelling extraordinary circumstance requires that an emergency rule or regulation, amendment, revision, or revocation of an existing rule or regulation become effective without delay, an agency may adopt promulgate any such rule, provided the Governor shall first certify to this effect and ~~it~~ such certifies such rule pursuant to the provisions of this section. For the purposes of this section the term "other compelling extraordinary circumstance" includes but is not limited to a finding that an imminent budget reduction because of budget restraints or federal requirements would occur or the agency would be in violation of federal or state law.

B. An emergency rule adopted by an agency shall:

1. be prepared in the format required by Section 251 of this title;

2. specify the reasons for the finding of the emergency. The specific reasons shall contain facts upon which a reasonable person could conclude the existence and nature of an imminent peril to the health, safety, welfare, or other compelling extraordinary circumstance which necessitates the immediate rulemaking action. Such specified reasons shall not be merely conclusory statements or repetition of statutory language; and

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3. be transmitted to the Governor.

C. 1. Upon the filing of an adopted emergency rule by an agency with the Governor under the provisions of subsection B of this section, the Governor shall review such rule and shall decide as to whether or not such emergency rule should be certified.

2. The Governor shall disapprove an emergency rule if he determines:

- a. that the agency has exceeded the scope of its statutory authority in adopting the emergency rule; or
- b. that an emergency does not exist justifying the promulgation of the rule.

3. The sufficiency of the reasons for a finding of imminent peril to the public health, safety or welfare or compelling extraordinary circumstances and the determination of the Governor shall be subject to review, based upon a petition for declaratory judgment and a petition for a writ of mandamus, or injunctive relief, as appropriate. Such proceeding may be instituted by:

- a. the agency which promulgated the emergency rule;
- b. a member of the Legislature; or
- c. any person whose personal or property interests will be significantly affected by the approval or disapproval of the emergency rule.

D. Upon certification by the Governor, the agency may proceed without prior notice or hearing or upon any abbreviated notice and hearing as required by Section 303 of this title. Such emergency adoption rule shall be considered promulgated and shall be in force immediately, or on such date as specified therein, and the. Upon certification, the Governor shall immediately file three copies of his the certification and three copies of the emergency adoption rule with the Secretary of State and the State Librarian and Archivist as provided in Section 114 of this act Director of the Department of Libraries. A copy of the certification and the certified emergency rule shall be submitted to the Administrative Rule Review Committee created pursuant to Section 19 of this act. The Governor's certificate and the emergency adoption rule shall be published in accordance with the provisions of Section 5 of this act 255 of this title in the next publication of The Oklahoma Register following the certification by the Governor.

E. An emergency rule may be promulgated when the Legislature is in session provided such emergency rule shall be effective for a period of not longer than one hundred twenty (120) days after the date of certification by the Governor, unless otherwise specifically provided by the Legislature. If the emergency is still in existence after the expiration of the one hundred twenty (120) days and the Legislature is not in session, the agency may repromulgate the emergency rule for additional one hundred twenty (120) day periods upon certifications by the Governor that the emergency still exists.

~~Executive orders of the Governor shall become effective upon the date specified therein or immediately upon issuance, and shall be published as required by Section 5 of this act.~~

If an emergency rule is of a continuing nature, the agency promulgating such emergency rule shall initiate proceedings for promulgation of a permanent rule pursuant to Sections 14 through 23 of this act.

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Any emergency rule in effect on the first day of the next succeeding regular session of the Legislature, after the promulgation of such emergency rule, shall be in full force and effect for the term of such session unless:

1. otherwise disapproved by the Legislature;
2. superceded by the promulgation of permanent rules; or
3. any adopted rules based upon such emergency rules are subsequently disapproved pursuant to Section 308 of Title 75 of the Oklahoma Statutes.

Emergency rules in effect on the first day of the session shall be null and void after sine die adjournment of the Legislature unless otherwise specifically provided by the Legislature.

F. Emergency rules shall not become effective unless certified by the Governor pursuant to this section.

SECTION 7. AMENDATORY 75 O.S. 1981, Section 254, is amended to read as follows:

Section 254. The Secretary of State shall have authority to make and certify A. Prior to the transmission of a finally adopted rule to the Department of Libraries, the rulemaking authority shall attest:

1. to the correctness of copies of any rule or regulation and any amendment, revision, or revocation thereof; and to charge such fees as are allowed by law;--Such certified copies shall have the same effect as the original for any purpose
2. that such rules were made and finally adopted in substantial compliance with the Administrative Procedures Act.

Such attested rules shall then be transmitted to the Department of Libraries for filing pursuant to Section 251 of this title and for publication pursuant to Section 255 of this title.

B. Upon publication of such transmitted rules pursuant to Section 255 of this title, the Department of Libraries shall certify to the agency that such rules have been published. The Department of Libraries shall send such certified proof of publication to the agency submitting the rules for publication. The agency submitting the rules shall make such rules available to the public in accordance with the Open Records Act.

C. Copies of such rules and certification shall be permanently preserved by the Department of Libraries.

SECTION 8. AMENDATORY 75 O.S. 1981, Section 255, as amended by Section 1, Chapter 76, O.S.L. 1983 (75 O.S. Supp. 1986, Section 255), is amended to read as follows:

Section 255. A. The State Librarian and Archivist Director of the Department of Libraries is hereby authorized, directed, and empowered to publish The Oklahoma Register monthly for the publication of new rules, any amendment, revision or revocation of an existing rule, emergency rules, any notices of such rulemaking process and Executive Orders as are required by law to be published in The Oklahoma Register. No new rule or regulation or any amendment, revision or revocation of an existing rule and regulation shall be in effect until seven (7) days, including holidays, Saturdays, and Sundays, after the date of publication by the State Librarian and Archivist. Said rules or regulations or amendments, revisions, or revocations of existing rules and regulations shall be published in the first issue of The Oklahoma Register published after

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the date of receipt by the State Librarian and Archivist Director of the Department of Libraries pursuant to Section 251 of this title. The State Librarian and Archivist Director of the Department of Libraries shall cause a copy of each publication of a new rule or regulation or any amendment, revision, or revocation of an existing rule and regulation to be sent to every county clerk in this state, to members of the Legislature upon request, and to such other agencies, libraries, and officials he may select. The State Librarian and Archivist Director of the Department of Libraries may charge nongovernmental and nonofficial recipients of the publication the a cost of the copies furnished sufficient to defray the cost of publication and mailing. The State Librarian and Archivist Director of the Department of Libraries shall cause a copy of all rules and regulations, all new rules and regulations, and all amendments, revisions, or revocations of existing rules and regulations to be on file and available for public examination in the Oklahoma State Library Department of Libraries during normal office hours. The county clerks shall also maintain or cause to be maintained files of these publications for public examination during normal office hours. The State Librarian and Archivist Director of the Department of Libraries shall promulgate rules to systematize the designations of rules and regulations. To establish said system or to preserve uniformity of designations, the State Librarian and Archivist Director of the Department of Libraries may change the title or numbering of any rule or regulation or any amendment, revision, or revocation thereof and, as soon as possible after said change, shall notify the appropriate agency and the Secretary of State.

B. The Director of the Department of Libraries is authorized to provide for the publication of rules which are of such length that publication of the full text would be too costly in summary form in The Oklahoma Register. The summary shall be prepared by the agency submitting the Rules and shall include where the full text of the rule may be obtained.

C. The notice required pursuant to the provisions of Section 303 of this title shall also be published in The Oklahoma Register prior to the adoption, amendment or repeal of any rule. The notice of the proposed rule shall include in simple language a brief summary of the rule, the contents of the rule, the circumstances which created the need for the rule, and the intended effect of the rule.

D. Rules which have been filed pursuant to Section 251 of this title, published pursuant to the provisions of Section 255 of this title, and otherwise comply with the Administrative Procedures Act shall be considered promulgated.

SECTION 9. AMENDATORY 75 O.S. 1981, Section 256, is amended to read as follows:

Section 256. A. 1. Effective July 1, 1990, the Director of the Department of Libraries shall compile and index agency rules and Executive Orders promulgated pursuant to the Administrative Procedures Act in a publication which shall be known as the Oklahoma Administrative Code.

Compilations or revisions of the Code or any part thereof shall be supplemented or revised annually. The Code shall be arranged, indexed and printed in a manner to permit separate publications of portions thereof relating to individual agencies.

2. Annual supplements to the Code shall be cumulative. Emergency rules shall not be published in the Code or in any supplements thereto.

3. The Code and the supplements shall include a general subject index of all rules and Executive Orders contained therein and such

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notes, cross references and explanatory materials as required by the Director of the Department of Libraries.

4. The Director in preparing such rules for publication in the Code or supplements shall omit all material shown in canceled type. The Director of the Department of Libraries shall not prepare any rule for publication in the Code which amends or revises a rule unless the rule so amending or revising conforms to the provisions of the Administrative Procedures Act.

B. 1. At the beginning of each calendar year the Director shall, as soon as possible, assemble all rules and Executive Orders, except emergency rules, promulgated during the preceding year in accordance with the provisions of the Administrative Procedures Act for publication in the Oklahoma Administrative Code.

2. Effective July 1, 1990, copies of all current Executive Orders signed by the Governor shall be transmitted by the Secretary of State to the Director of the Department of Libraries who shall publish the text of the Executive Order in the Code.

(a) C. The Director of the Oklahoma Department of Libraries, as State Librarian and Archivist, is hereby authorized and empowered to furnish copies of all rules and regulations or any amendments, revisions, or revocations of existing rules and regulations, free of charge to any publisher who agrees in writing contract to publish a Code of Oklahoma Rules and Regulations an Administrative Code, and to publish such annual cumulative supplements thereto not less often than once every two (2) years (the exact period to be specified in the agreement) during the period of time covered by the agreement; provided that after the first such agreement has been made and performed, subsequent agreements may be made and copies furnished of the publications of such supplements as are necessary so as to keep the Code current. All such agreements shall provide that the publisher shall make such publications in such form and arrangement as shall be approved by the Director, and that the publisher shall furnish the Department with twelve free copies of all such publications, and shall also furnish three free copies of all such publications to the University of Oklahoma College of Law Library and one free copy to the Oklahoma State University Library at Stillwater, Oklahoma. Failure of any such publisher to perform the terms of any such agreement as required therein shall terminate such agreement and such publisher shall be liable to the State Librarian and Archivist for the cost of all such copies furnished by him to such publisher, and all such costs recovered by the State Librarian and Archivist shall be paid into the State Library Fund.

(b) if at any time the State of Oklahoma should purchase copies of the Code of Oklahoma Rules and Regulations, or any supplements thereto, said publications shall be delivered to and distributed by the Secretary of State, provided that fifty unmarked copies of the Code or any supplements shall be purchased for and delivered to the Publications Clearinghouse of the Oklahoma Department of Libraries and become the property of the Oklahoma Department of Libraries for use of the library and for exchange by the Publications Clearinghouse for the administrative codes or other publications of the official libraries of other states, territories and possessions of the United States, as set out in Section 3-115 of Title 65 of the Oklahoma Statutes, and provided further that fifty unmarked copies of each volume shall be purchased for and delivered to and become the property of the University of Oklahoma College of Law Library to be used for the exchange by the Librarian of that library for the publications of other colleges or schools of law.

D. Publication of a rule in the Code as a promulgated rule shall establish a rebuttable presumption that the rule was duly filed and that the text of the rule as published in the Code or as otherwise designated by the Director of the Department of Libraries is the text of the rule as promulgated.

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E. The Director of the Department of Libraries shall make copies of the Code generally available at a cost sufficient to defray the cost of publication and mailing.

F. 1. There is hereby created a Task Force on Administrative Rules to be composed of fifteen (15) members. The members of the Task Force on Administrative Rules shall be as follows:

- a. Five members shall be appointed by the Speaker of the House of Representatives, three of whom shall be members of the House of Representatives providing that no more than two members of the three shall be of any one political party and one of whom shall be an attorney appointed from a list prepared and submitted by the Oklahoma Bar Association consisting of the names of five attorneys who have substantial experience and knowledge of administrative law. The final member shall be a lay member who has knowledge and experience in administrative procedures.
- b. Five members shall be appointed by the President Pro Tempore of the Senate, three of whom shall be members of the Senate providing that no more than two members of the three shall be of any one political party and one of whom shall be an attorney appointed from a list prepared and submitted by the Oklahoma Bar Association consisting of the names of five attorneys who have substantial experience and knowledge of administrative law. The final member shall be a lay member who has knowledge and experience in administrative procedures.
- c. Four members shall be appointed by the Governor, two of whom shall be the administrative head of agencies of this state and two of whom shall be lay members who have knowledge and experience in administrative law or procedure.
- d. The fifteenth member shall be an attorney from the Office of the Attorney General appointed by the Attorney General.

The Speaker of the House of Representatives shall appoint the chairman for the Task Force and the President Pro Tempore of the Senate shall appoint the vice-chairman for the Task Force from their respective list of membership appointments.

The Department of Libraries shall assist the Task Force on Administrative Rules in initiating and organizing the study, reviewing information received by the Task Force, receiving input from agencies, formulating recommendations and strategies for implementation of subsection A of this section. The final report required by paragraph 2 of this subsection shall reflect and include the Department's recommendations.

The Task Force on Administrative Rules shall be reimbursed as follows: Legislative members of the Committee shall be reimbursed for their necessary travel expenses incurred in the performance of their duties in accordance with Section 456 of Title 74 of the Oklahoma Statutes. Nonlegislative members of the Committee who are not employees of this state shall be reimbursed by their respective appointing authority for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act. Members of the Committee who are employees of this state shall only be reimbursed pursuant to the State Travel Reimbursement Act for their necessary travel expenses for any meetings or hearings of the Committee not held in the Oklahoma City vicinity.

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The staff of each house of the Legislature shall perform such duties as are required by the Task Force in the performance of its duties.

2. The Task Force shall conduct a comprehensive study on the development of a uniform system for codification of rules to implement the provisions of subsection A of this section. The study shall include but not be limited to a review of procedures followed by state agencies in preparing administrative rules, central control and administration of rules by the Department of Libraries, recommendations as to the methods of publication and codification of such rules, schedule for agency compliance, distribution of the Code, submission guidelines for rules, cost of implementation of such publication and codification, and such other information as deemed necessary by the Task Force. The Task Force shall prepare a written report on its findings and recommendations and shall submit such report to the Speaker of the House of Representatives, President Pro Tempore of the Senate and the Governor by January 1, 1988.

SECTION 10.78 NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 257 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. Upon the request of the Department of Libraries, the Office of the Attorney General shall provide such legal assistance to the Department as is necessary to implement the provisions of Article I of the Administrative Procedures Act.

B. The Attorney General shall prepare and provide for the publication and distribution to the agencies, a pamphlet or information sheet as to the procedures required by the Administrative Procedures Act for the adoption, review, and promulgation of rules.

SECTION 11. AMENDATORY 75 O.S. 1981, Section 301, as last amended by Section 11, Chapter 196, O.S.L. 1985 (75 O.S. Supp. 1986, Section 301), is amended to read as follows:

Section 301. As used in this act the Administrative Procedures Act:

1. "Agency" means any state board, bureau, commission, department, authority, public trust in which the state is a beneficiary, or interstate commission, bureau or officer authorized by the Constitution or statutes to make rules or to formulate orders, except:

a. The Legislature or any branch, committee or officer thereof; and

b. The courts;

~~The Oklahoma Tax Commission, Oklahoma Public Welfare Commission, Transportation Commission, the Oklahoma Ordnance Works Authority and Oklahoma Corporation Commission, except with respect to Section 304 of this title;~~

~~The Pardon and Parole Board;~~

~~The Oklahoma Military Department;~~

~~The supervisory or administrative agency of any penal, mental, medical or eleemosynary institution, in respect to the institutional supervision, custody, control, care or treatment of inmates, prisoners or patients therein, provided that the provisions of this act shall apply to and govern all administrative actions of the Oklahoma Alcohol Prevention, Training, Treatment and Rehabilitation Authority;~~

78. 75 O.S. Supp. 1987, § 257.

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~~(g) The Board of Regents or employees of any university, college, or other institution of higher learning, except with respect to expulsion of any student for disciplinary reasons, provided, that any alleged infraction by a student of rules of such institutions, with a lesser penalty than expulsion or suspension for a period exceeding one (1) week, shall not be subject to the provisions of this act; and further providing that a student in a state-supported institution of higher learning against whom a disciplinary proceeding shall have been commenced upon sworn affidavit on one of the following grounds of misconduct may forthwith be barred from the campus and be removed from any college or university-owned housing, pending final determination of the proceeding against him:~~

1. ~~participation in a riot as defined by the penal code;~~
2. ~~possession or sale of any drugs or narcotics prohibited by the penal code;~~
3. ~~willful destruction of or willful damage to state property;~~
4. ~~unauthorized presence in or occupation of any part of the campus after resisting an order to leave by duly constituted authority;~~

~~(h) The Oklahoma Horse Racing Commission, its employees or agents with respect to hearing and notice requirements on the following classes of violations which are an imminent peril to the public health, safety and welfare:~~

1. ~~any rule regarding the running of a race;~~
2. ~~any violation of medication laws and rules;~~
3. ~~any suspension or revocation of an occupation license by any racing jurisdiction recognized by the Commission;~~
4. ~~any assault or other destructive acts within Commission-licensed premises;~~
5. ~~any violation of prohibited devices, laws and rules;~~
6. ~~any filing of false information;~~

~~(2) 2. "Rule" means any agency statement of general applicability and future effect that implements, interprets or prescribes substantive law or policy, or prescribes describes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule but does not include (A):~~

- a. the issuance, renewal or denial of licenses; (B) an individual specific license;
- b. the approval, disapproval or prescription of rates; (C)
- c. statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; (D) interagency memoranda; or (E)
- d. intragency memoranda; or
- e. declaratory rulings issued pursuant to Section 308 307 of this title;

~~(3) 3. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law;~~

Additions in text are indicated by underline; deletions by ~~strikeouts~~

†4† 4. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license;

†5† 5. "Rulemaking" means the process employed by an agency for the formulation of a rule;

†6† 6. "Order" means all or part of the final or intermediate decision, whether affirmative, negative, injunctive or declaratory in form, by an agency in any matter other than rulemaking, or rulings on motions or objections made during the course of a hearing, or exclusions described in ~~clauses-†8†~~ subparagraph c and-†9† of paragraph †2† 2 of this section;

†7† 7. "Individual proceeding" means the process employed by an agency for the formulation of an order;

†8† 8. "Party" means a person or agency named and participating, or properly seeking and entitled by law to participate, in an individual proceeding;

†9† 9. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency;

10. "Adopted" means that a proposed rule has been approved by the agency but has not been reviewed by the Legislature pursuant to Section 308 of this title or has not been finally adopted;

11. "Final or finally adopted" means a rule which has been reviewed by the Legislature pursuant to Section 308 of this title if required, and otherwise complies with the requirements of the Administrative Procedures Act but has not been filed pursuant to Section 251 of this title or published pursuant to Section 255 of this title;

12. "Promulgated" means that a finally adopted rule has been filed and published in accordance with the provisions of the Administrative Procedures Act or is an emergency rule certified by the Governor;

13. "Director" means the Director of the Department of Libraries or State Librarian and Archivist; and

14. "Committee" means the Administrative Rule Review Committee created pursuant to Section 19 of this act.

SECTION 12.79 NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 250.4 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. 1. Except as is otherwise specifically provided in this subsection, each agency is required to comply with Article I of the Administrative Procedures Act.

2. The Corporation Commission shall comply with Section 18 of Article 9 of the Oklahoma Constitution. In addition, the Corporation Commission shall comply with the filing and transmittal requirements of Sections 251 and 254, the publication requirements of Section 255 and the provisions of Section 302 of Title 75 of the Oklahoma Statutes.

Effective July 1, 1988, the Corporation Commission shall be required to comply with all the provisions of Article I of the Administrative Procedures Act.

79. 75 O.S.Supp.1987, § 250.4.

Additions in text are indicated by underline; deletions by ~~strikeouts~~

B. As specified, the following agencies or classes of agency activities are not required to comply with the provisions of Article ~~18~~ of the Administrative Procedures Act:

1. The Oklahoma Tax Commission;
2. The Oklahoma Public Welfare Commission;
3. The Oklahoma Ordnance Works Authority;
4. The Oklahoma Corporation Commission;
5. The Pardon and Parole Board;
6. The Midwestern Oklahoma Development Authority;
7. The Grand River Dam Authority;

8. The supervisory or administrative agency of any penal, mental, medical or eleemosynary institution, only with respect to institutional supervision, custody, control, care or treatment of inmates, prisoners or patients therein; provided, that the provisions of Article II shall apply to and govern all administrative actions of the Oklahoma Alcohol Prevention, Training, Treatment and Rehabilitation Authority;

9. The Board of Regents or employees of any university, college, or other institution of higher learning, except with respect to expulsion of any student for disciplinary reasons; provided, that any alleged infraction by a student of rules of such institutions, with a lesser penalty than expulsion or suspension for a period exceeding one (1) week, a student in a state-supported institution of higher learning against whom a disciplinary proceeding has been commenced upon sworn affidavit on one of the following grounds of misconduct may forthwith be barred from the campus and be removed from any college or university-owned housing, pending final determination of the proceeding against him:

- a. participation in a riot as defined by the penal code,
- b. possession or sale of any drugs or narcotics prohibited by the penal code,
- c. willful destruction of or willful damage to state property,
- d. unauthorized presence in or occupation of any part of the campus after resisting an order to leave by duly constituted authority;

10. The Oklahoma Horse Racing Commission, its employees or agents only with respect to hearing and notice requirements on the following classes of violations which are an imminent peril to the public health, safety and welfare:

- a. any rule regarding the running of a race,
- b. any violation of medication laws and rules,
- c. any suspension or revocation of an occupation license by any racing jurisdiction recognized by the Commission,
- d. any assault or other destructive acts within Commission-licensed premises,

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- e. any violation of prohibited devices, laws and rules,
 - f. any filing of false information;
11. The Commissioner of Public Safety only with respect to hearings conducted pursuant to the provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;

12. The Administrator of the Department of Securities only with respect to hearings conducted pursuant to provisions of the Oklahoma Take-over Disclosure Act of 1985; and

13. Hearings conducted by a public agency pursuant to Section 962 of Title 47 of the Oklahoma Statutes.

SECTION 13. AMENDATORY 75 O.S. 1981, Section 302, is amended to read as follows:

Section 302. ~~††~~ A. In addition to other rulemaking requirements imposed by law, each agency shall:

~~††~~ 1. promulgate as a rule a description of ~~its~~ the organization of the agency, stating the general course and method of ~~its~~ the operations of the agency and the methods whereby the public may obtain information or make submissions or requests;

~~††~~ 2. promulgate rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

~~††~~ 3. make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, promulgated or used by the agency in the discharge of its functions;

~~††~~ 4. make available for public inspection all final orders, decisions and opinions.

B. 1. An agency shall maintain an official rulemaking record for each proposed rule or promulgated rule. The record and materials incorporated by reference shall be available for public inspection.

2. The agency rulemaking record shall contain:

a. copies of all publications in The Oklahoma Register with respect to the rule or the proceeding upon which the rule is based;

b. copies of any portions of the agency's public rulemaking docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. all written petitions, requests, submissions, and comments received by the agency and all other written materials considered by the agency in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based;

d. any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations;

e. a copy of any regulatory analysis prepared for the proceeding upon which the rule is based;

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3. Upon its promulgation, the rule constitutes the rule. Except as otherwise provided, the rulemaking record shall be available for public inspection on that date.

C. An agency shall maintain a rulemaking record in the following form of action:

1. amend,

2. expand

3. except as otherwise provided, the Oklahoma Constitution shall guarantee the right of the Oklahoma citizen to inspect the rulemaking record.

D. Any agency action violating this section shall be deemed null and unenforceable.

E. This section shall not apply to any rule or order issued by an agency if the rulemaking record for that rule or order is not available for public inspection.

SECTION 14 amended by Section 303,

Section 303 amended by Section 303,

1. Give a copy of the rulemaking record to the person who requests it, or to the person who requests it on behalf of the person who requests it. The rulemaking record shall be made available to the person who requests it, or to the person who requests it on behalf of the person who requests it, in accordance with the provisions of this section.

2. Afford a copy of the rulemaking record to the person who requests it, or to the person who requests it on behalf of the person who requests it, in accordance with the provisions of this section.

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- f. a copy of the rule and explanatory statement filed with the Department of Libraries;
 - g. all petitions for exceptions to, amendments of, or repeal or suspension of, the rule;
 - h. a copy of any correspondence regarding the rule with the Administrative Rule Review Committee pursuant to Section 20 of this act and the agency's response; and
 - i. such other information concerning such rules as may be determined necessary by the Department.
3. Upon judicial review, the record required by this section constitutes the official agency rulemaking record with respect to a rule. Except as otherwise required by a provision of law, the agency rulemaking record need not constitute the exclusive basis for agency action on that rule or for judicial review thereof.
- C. An agency shall not by internal policy, memorandum, or other form of action:
- 1. amend, interpret, implement, or repeal a statute or a rule;
 - 2. expand upon or limit a statute or a rule; and
 - 3. except as authorized by the Constitution of the United States, the Oklahoma Constitution or a statute, expand or limit a right guaranteed by the Constitution of the United States, the Oklahoma Constitution, a statute, or a rule.
- D. Any agency memorandum, internal policy, or other form of action violative of this section or the spirit thereof is null, void, and unenforceable.
- E. This section shall not be construed to prohibit an agency issuing an opinion or administrative decision which is authorized by statute provided that, unless such opinion or administrative decision is issued pursuant to the procedures required pursuant to the Administrative Procedures Act, such decision or opinion shall not have the force and effect of law.

SECTION 14. AMENDATORY 75 O.S. 1981, Section 303, as amended by Section 1, Chapter 284, O.S.L. 1982 (75 O.S. Supp. 1986, Section 303), is amended to read as follows:

- Section 303. A. Prior to the adoption, amendment or repeal of any rule or amendment or repeal of a rule, the agency shall:
- 1. Give at least twenty (20) days' notice from the date of publication of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall also contain whether or not the agency intends to issue a cost/benefit analysis according to subsection B of this section and where copies of such analysis may be obtained. The notice shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and. Two copies of such notice shall be sent to the Department of Libraries who shall be published publish the notice in The Oklahoma Gazette Register, or successor publication pursuant to the provisions of Section 255 of this title;
 - 2. Afford all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must shall be granted if requested in writing by at least twenty-five persons, by a

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governmental subdivision or agency, or by an association having not less than twenty-five members. The agency shall consider fully all written and oral submissions respecting the proposed rule;

3. Consider the effect its intended action may have on the various types of business entities. If an agency finds that its actions may adversely affect any such entity, the agency may modify its actions to exclude that type of entity, or may "tier" its actions to allow rules, penalties, fines or reporting procedures and forms vary according to the size of a business and/or its ability to comply; and

4. Consider the effect its intended action may have on the various types of consumer groups. If an agency finds that its actions may adversely affect such groups, the agency may modify its actions to exclude that type of activity.

B. 1. Except as otherwise provided in this subsection, an agency shall issue a cost/benefit analysis of a proposed rule prior to or within fifteen (15) days after the date of publication of the notice of proposed rule adoption pursuant to subsection A of this section.

2. Except as otherwise provided in this subsection, the cost/benefit analysis shall contain:

- a. a description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule
- b. a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons;
- c. the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- d. a comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction;
- e. a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule; and
- f. a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

3. Each cost/benefit analysis shall include quantification of the data to the extent practicable and shall take into account both short-term and long-term consequences.

4. To the extent an agency for good cause finds the preparation of a cost/benefit analysis or the specified contents thereof are unnecessary, impracticable or contrary to the public interest in the process of adopting a particular rule, the agency may request the Governor to waive such requirement. If the Governor fails to waive such requirement, the cost/benefit analysis shall be completed. The determination to waive the cost/benefit analysis shall not be subject to judicial review.

5. If the agency has complied with the requirements of paragraphs 1, 2 and 3 of this subsection, the rule shall not be

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invalidated on the ground that the contents of the cost/benefit analysis are insufficient or inaccurate.

B. C. If an agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than twenty (20) days notice and states in writing or hearing or upon any finding it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. The rule may be effective for a period of not longer than one hundred twenty (120) days, but the adoption of an identical rule under the procedure set by subsection A is not precluded. The sufficiency of the reasons for a finding of imminent peril to the public health, safety or welfare shall be subject to judicial review or other compelling extraordinary circumstances exist, the agency is authorized to promulgate emergency rules pursuant to the provisions of Section 253 of this title.

E. D. No rule hereafter adopted is valid unless adopted promulgated in substantial compliance with this section the Administrative Procedures Act. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two (2) years from the effective date of the rule.

SECTION 15. AMENDATORY 75 O.S. 1981, Section 304, is amended to read as follows:

Section 304. ~~†~~ A. 1. Each agency shall file copies of each rule finally adopted by it, including all rules existing on the effective date of this act with the Department of Libraries, as required by 75 O.S. 1961, Section 251 of this title.

†b) 2. Each rule hereafter finally adopted is effective twenty (20) calendar days after filing publication in The Oklahoma Register pursuant to Section 255 of this title except that:

††) a. if a later date is required by statute or specified in the rule, the later date is the effective date;

††) b. subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing or at a stated date after certification by the Governor. Such emergency rules shall be filed with the Secretary of State Department of Libraries, or at a stated date less than twenty (20) days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety or welfare. The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

B. Except as otherwise provided by Sections 6 and 12 of this act, an agency shall not promulgate a rule until such rule has been submitted and reviewed by the Administrative Rule Review Committee pursuant to Section 19 of this act and the Legislature pursuant to Section 308 of this title.

C. Executive Orders signed by the Governor shall become effective upon the date specified therein or immediately upon issuance.

SECTION 16. AMENDATORY 75 O.S. 1981, Section 305, is amended to read as follows:

Section 305. An interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. The

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agency shall act upon said petition within a reasonable time. If, within thirty (30) calendar days after submission of a petition, the agency has not initiated rulemaking proceedings in accordance with the Administrative Procedures Act, the petition shall be deemed to have been denied.

SECTION 17. AMENDATORY 75 O.S. 1981, Section 306, is amended to read as follows:

Section 306. A. The validity or applicability of a rule may be determined in an action for declaratory judgment in the district court of the county of the residence of the person seeking relief or, at the option of such person, in the county wherein the rule is sought to be applied, if it is alleged the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff.

B. The agency shall be made a party to the action.

C. Rules promulgated pursuant to the provisions of the Administrative Procedures Act are presumed to be valid until declared otherwise by a district court of this state or the Supreme Court. When a rule is appealed pursuant to the Administrative Procedures Act it shall be the duty of the promulgating agency to show and bear the burden of proof to show:

1. that the agency possessed the authority to promulgate the rule;

2. that the rule is consistent with any statute authorizing or controlling its issuance and does not exceed statutory authority;

3. that the rule is not violative of any other applicable statute or the Constitution; and

4. that the laws and administrative rules relating to the adoption, review and promulgation of such rules were faithfully followed.

The provisions of this subsection shall not be construed to impair the power and duty of the Attorney General to review such rules and regulations and issue advisory opinions thereon.

D. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

SECTION 18. AMENDATORY 75 O.S. 1981, Section 307, is amended to read as follows:

Section 307. Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any rule or order of the agency. A declaratory ruling, or refusal to issue such ruling, shall be subject to a judicial review in the manner provided for review of decisions in individual proceedings as provided in Sections 317 through 323 of this title.

SECTION 19.⁸⁰ NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 307.1 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created a joint committee of the Legislature, known as the Administrative Rule Review Committee, to review all adopted agency rules and such other rules as the Committee deems appropriate. The Committee shall be composed of six members of the

80. 75 O.S.Supp.1987, § 307.1.

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Senate, appointed by the President Pro Tempore of the Senate, and six members of the House of Representatives appointed by the Speaker of the House of Representatives. In addition, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be ex officio nonvoting members of the Committee. The first named appointee of the President Pro Tempore of the Senate shall be chairman or vice-chairman of the Committee as provided in this section. The first named appointee of the Speaker of the House of Representatives shall be chairman or vice-chairman of the Committee as provided in this section. In odd-numbered years the chairman of the Committee shall be a member of the House of Representatives from the convening of the regular session in that year until the convening of the regular session in the next ensuing year. In even-numbered years the chairman of the Committee shall be a member of the Senate from the convening of the regular session of that year until the convening of the regular session of the next ensuing year. The vice-chairman shall exercise all of the powers of the chairman in the absence of the chairman. The members shall serve until their successors shall have been appointed. Vacancies on the Committee shall be filled by the original appointing authority for the remainder of the term. A vacancy shall exist whenever a Committee member ceases to be a member of the Legislature.

B. The Committee may meet at any time, both during sessions of the Legislature and in the interim. All said meetings, regular or special, shall be open to the public and any interested person may be heard and present evidence.

A quorum of the Committee shall be seven. All actions of the Committee may be taken by a majority of those present when there is a quorum.

C. The function of the Committee shall be the review and promotion of adequate and proper rules by agencies and developing an understanding on the part of the public respecting such rules. Such function shall be advisory only.

D. The Committee may be convened upon the call of the chairman to review an adopted rule. The Committee may hold a public hearing to review the adopted rule.

E. The Administrative Rule Review Committee may review all adopted rules and such other rules the Committee deems appropriate and may make recommendations concerning such rules to the Legislature, or to the agency adopting the rule, or to both the Legislature and the agency.

F. In addition to the review of agency adopted rules pursuant to this act, the Administrative Rule Review Committee shall have the power and duty to:

1. Conduct a continuous study and investigations as to whether additional legislation or changes in legislation are needed based on various factors, including but not limited to, review of proposed rules, review of existing rules including but not limited to consideration of amendments to or repeal of existing rules, the lack of rules, the ability of agencies to promulgate such rules, and the needs of administrative agencies;

2. Conduct a continuous study of the rulemaking process of all state agencies including those agencies exempted by Section 12 of this act for the purpose of improving the rulemaking process;

3. Administer oaths or affirmations and take affidavits or depositions, and subpoena and compel the attendance of any person before the Committee, or require the production of any records, books, papers, contracts or other documents;

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4. Conduct such other studies and investigations relating to rules as may be determined to be necessary by the Committee; and

5. Monitor and investigate compliance of agencies with the provisions of the Administrative Procedures Act, make periodic investigations of the rulemaking activities of all agencies and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy.

SECTION 20.⁸¹ NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 307.2 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. All adopted rules, amendments to an existing rule or repeal of an existing rule proposed by an agency shall be submitted to the Administrative Rule Review Committee within ten (10) days of its adoption; provided that by April 1 of each year, unless otherwise specifically authorized by the Committee, all rules, amendments to an existing rule, or repeal of an existing rule adopted by an agency, and an agency rule report as required by subsection C of this section shall be submitted to the Committee. When the rule has been submitted to the Committee, the agency shall also submit to the Director of the Department of Libraries for publication in The Oklahoma Register a statement that the adopted rule has been submitted to the Committee.

B. The adopted rules shall be submitted with:

- 1. full text; and
- 2. new language underlined and with language to be deleted from any existing rule stricken through but clearly legible.

C. The report required by subsection A of this section shall include:

- 1. the date the notice for proposed rules was published in The Oklahoma Register pursuant to Section 255 of Title 75 of the Oklahoma Statutes;
- 2. the name and address of the agency;
- 3. the title and number of the rule;
- 4. a citation to the statutory authority for the rule;
- 5. a brief summary of the content of the adopted rule;
- 6. a statement explaining the need for the adopted rule;
- 7. the date and location of the meeting at which such rules were adopted;
- 8. a summary of the comments and explanation of changes or lack of any change made in the adopted rules as a result of testimony received at public hearings;
- 9. a list of persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing;
- 10. a cost/benefit impact analysis if required pursuant to Section 303 of Title 75 of the Oklahoma Statutes;

81. 75 O.S.Supp.1987, § 307.2.

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11. the incorporation by reference statement if the rule incorporates a set of rules from a body outside the state, such as a national code;

12. the members of the governing board of the agency adopting the rules and the recorded vote of each member; and

13. any other information requested by the Committee.

D. The Committee shall review each adopted rule. Such review shall include, but not be limited to, a determination of whether:

1. the adopted rule is within the scope of the agency's statutory or constitutional authority;

2. the adopted rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

3. the adopted rule conflicts with the United States Constitution, the Oklahoma Constitution, the Administrative Procedures Act, with any other statute, or with any other rule adopted by the same or a different agency;

4. the rule is necessary to accomplish fully the objectives of the statute under which the rule was adopted;

5. the adopted rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

6. the adopted rule could be made less complex or more readily understandable by the general public; and

7. the rule was adopted in compliance with the requirements of the Administrative Procedures Act.

E. The Committee may request the agency whose rules are to be reviewed to appear at a hearing.

F. The Committee may require any agency to submit such data and information as required by the Committee in the performance of its duties under this section and no agency shall fail to provide the information or data required.

G. Within thirty (30) calendar days of receipt of the adopted rule and report pursuant to subsection A of this section, the Committee shall issue a notice of review and recommendation to the agency submitting the rule. Failure of the Committee to issue such report within the required time limit shall constitute committee review and authorization to the agency to submit such rule for review to the Legislature pursuant to the provisions of Section 308 of Title 75 of the Oklahoma Statutes.

H. After reviewing the adopted rule, the Committee may recommend to the Legislature that:

1. the agency promulgate the rule; or

2. the agency promulgate part of the rule; or

3. the agency promulgate the rule with certain amendments; or

4. the rule be withdrawn. The Committee may recommend that a proposed rule or portion thereof be withdrawn only for one of the following reasons:

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- a. An absence of adequate statutory authority,
- b. An emergency relating to public health, safety or welfare,
- c. Failure to comply with legislative intent,
- d. Being contrary to state law,
- e. A change of circumstances upon which the rule is based,
- f. Being arbitrary and capricious or imposing an undue hardship,
- g. The preparation of the rule conflicts with procedures required pursuant to the Administrative Procedures Act,
- h. Appears to be in conflict with an existing statute,
- i. The adopted rule exceeds the agency's statutory authority,
- j. Appears to be deficient in any other manner, or
- k. Cost of implementing such rule.

I. 1. If after receipt of the notice of review and recommendation, an agency elects to modify an adopted rule, amendment or repeal of existing rules to meet the Committee's objections, the agency shall make such modifications as are necessary to meet the objections and shall resubmit the rule to the Committee.

2. If an agency elects to withdraw an adopted rule, amendment, or repeal of existing rules as a result of the Committee's objections, it shall notify the Committee, in writing, of its election. The agency shall file a notice of such withdrawal for publication in the Oklahoma Register.

3. If a rule has been withdrawn, modified, and then resubmitted to the Committee, the rule shall be considered to have been submitted to the Committee on the date of such resubmission. Notice of any resubmission of such rule shall be published as was required by the original submission pursuant to this section.

4. Any rule for which the Committee has recommended modification, amendment or withdrawal, unless otherwise approved by the Committee, shall not be issued as an emergency rule.

J. When the Legislature convenes, each Committee chairman shall enter a statement in the journal of each respective house on the first day of publication of such journal listing the rules received and any action taken by the Committee regarding the rules. Thereafter during session, any action taken by the Committee concerning the review of an adopted rule shall be published in the journals of each respective house following such action taken.

K. The Committee may recommend legislative action pursuant to Section 308 of Title 75 of the Oklahoma Statutes for agency refusals to modify, amend or withdraw a rule.

SECTION 21. AMENDATORY 75 O.S. 1981, Section 308, as amended by Section 1, Chapter 18, O.S.L. 1982 (75 O.S. Supp. 1986, Section 308), is amended to read as follows:

Section 308. †A. Copies of promulgated rules which have been adopted by an agency and reviewed, or modified and reviewed pursuant to Section 20 of this act, a copy of the agency report filed pursuant to Section 20 of this act, and if made a copy of the review and

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recommendations of the Committee specified in Section 20 of this act shall be filed by the adopting agency with the Speaker of the House of Representatives and the President Pro Tempore of the State Senate within ten-~~(10)~~ twenty (20) calendar days after their adoption by such agency receipt of the notice of review and recommendations of the Committee. Two copies shall be filed with both the Speaker of the House of Representatives and the President Pro Tempore of the State Senate. All copies of such rules shall be accompanied by a cover sheet which shall contain the following information:

1. Official name of agency submitting the proposed rules;
2. The statutory authority for the agency to adopt the rules submitted;
3. The official title of the rules being submitted;
4. The date and location of the meeting at which such rules were adopted; and
5. The members of the governing Board adopting the submitted rules and the recorded vote of each member.

B. Upon commencement of each legislative session and thereafter during the legislative session, upon receipt of any adopted rules reviewed by the Committee pursuant to Section 20 of this act, the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall assign such rules to the appropriate committee of each house of the Legislature for review.

(b) C. By the adoption of a joint resolution, either house of or as otherwise authorized by the Constitution, the Legislature may disapprove any rule which has been transmitted as required by other subsections of this section and the adopting agency adopting such rules shall not have authority to promulgate resubmit such rule, except during the first sixty (60) calendar days of a subsequent legislative session. Rules may be disapproved in part or in whole by the Legislature. Any resolution disapproving a rule shall be filed with the Department of Libraries for publication in the Oklahoma Register.

D. Unless otherwise provided by specific vote of the Legislature, resolutions introduced for purposes of disapproving a rule shall not be subject to regular legislative cutoff dates and shall be limited to such provisions as may be necessary for approval of a rule and shall contain no other provisions.

(c) E. Failure of the Legislature to disapprove any rule transmitted under the provisions of other subsections of this section within thirty (30) legislative days after such rule has been transmitted shall result in the approval of such rule by the Legislature. Provided, that in the event the Legislature is not in session at the time of the transmitting of an emergency rule or adjourns before the expiration of said thirty (30) legislative days, then said rule shall be subject to the agency:

1. shall resubmit such rule for consideration by the next Legislature during the first thirty-~~(30)~~ legislative days of said succeeding session; and
2. may proceed under emergency provisions pursuant to Section 253 of this title.

(d) F. Except as otherwise provided in this subsection an agency may adopt, amend or repeal a rule only during such times when the Legislature is in session by Section 253 of this title, Section 12 of this act, or as otherwise specifically provided by the Legislature, no agency shall promulgate any rule unless reviewed by the

Additions in text are indicated by underline; deletions by ~~strikeouts~~

Legislature pursuant to this section and Section 20 of this act. An agency may ~~adopt, amend or repeat~~ promulgate an emergency rule ~~while the legislature is not in session~~ only upon a finding that an imminent peril to the public health, safety or welfare or other compelling extraordinary circumstances requires the promulgation of such rule. ~~The reasons for a finding of an imminent peril to the public health, safety or welfare shall be stated in the rule or regulation, and the sufficiency of such reasons shall be subject to judicial review pursuant to Section 253 of this title.~~

f) G. Any rights, privileges, or interests gained by any person by operation of an agency emergency rule prior to its rejection or disapproval by either house of the legislature, shall not be affected by reason of any subsequent disapproval or rejection by either house of the Legislature.

SECTION 22.⁸² NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 308.1 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. An agency may finally adopt a properly filed adopted rule after the passage of thirty (30) legislative days from transmission of the rule pursuant to Section 308 of Title 75 of the Oklahoma Statutes unless such rule has been disapproved by the Legislature. The agency shall submit such finally adopted rule to the Department of Libraries for filing and publishing such rule pursuant to Sections 251 and 255 of the Oklahoma Statutes.

B. The text of the rule submitted for publication shall be the same as the text of the rule considered by the Legislature or as otherwise amended by action of the Legislature pursuant to Section 308 of Title 75 of the Oklahoma Statutes.

SECTION 23.⁸³ NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 308.2 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. No agency rule is valid or effective against any person or party, or may be invoked by the agency for any purpose, until it has been promulgated as required in the Administrative Procedures Act.

B. Rules shall be valid and binding on persons they affect, and shall have the force of law unless amended or revised or unless a court of competent jurisdiction determines otherwise. Except as otherwise provided by law, rules shall be prima facie evidence of the proper interpretation of the matter to which they refer.

SECTION 24. AMENDATORY 74 O.S. 1981, Section 664, is amended to read as follows:

Section 664. Copies of all Executive Orders signed by the Governor after July 1, 1981, shall be transmitted by the Secretary of State to the President Pro Tempore of the Senate and the Speaker of the House of Representatives within ten (10) days of the time said when such Orders are signed by the Governor to:

- 1. The President Pro Tempore of the Senate and the Speaker of the House of Representatives; and
2. The Director of the Department of Libraries.

SECTION 25. AMENDATORY Section 15, Chapter 338, O.S.L. 1982, as last amended by Section 4, Chapter 252, O.S.L. 1986 (74 O.S. Supp. 1986, Section 840.15), is amended to read as follows:

82. 75 O.S.Supp.1987, § 308.1.
83. 75 O.S.Supp.1987, § 308.2.

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Section 840.15 A. In establishing employment lists of eligible persons for competitive and noncompetitive appointment, certain preferences shall be allowed for ~~veterans-honorably-discharged-from-the-Armed-Forces-of-the-United-States~~ honorably discharged veterans as defined by Section 67.13a and Section 67.13b of Title 72 of the Oklahoma Statutes. In determination of the register rank:

1. Five points shall be added to the final grade of any person who has passed the examination and has submitted proof of having status as a veteran or unmarried surviving spouse of a veteran;
2. Five points shall be added to the final grade of any person who has passed the examination and has submitted proof of having status as a spouse of a veteran who is unemployable due to a service-connected disability as certified by the Veterans Administration or agency of the Defense Department within six (6) months of date of application; and
3. Ten points shall be added to the final grade of any war veteran as defined in Section 67.13a of Title 72 of the Oklahoma Statutes who has passed the examination and has submitted proof of having a service-connected disability as certified by the Veterans Administration or agency of the Defense Department within six (6) months of date of application. Such veterans' names shall be placed at the top of the register in accordance with their numerical rating if in receipt of benefits payable at the rate of thirty percent (30%) or more and such veterans shall not be denied employment and passed over for other veterans or nonveterans, without showing cause. Acceptable cause shall include a reasonable expectation of the inability of the preferred applicant to satisfactorily perform at the required level of the position and shall be reviewed in each instance by the Administrator of the Office of Personnel Management. If the Administrator finds that acceptable cause for the denial of employment to the preferred applicant does not exist, the appointing authority shall be required to hire the preferred applicant. The position shall not be permanently filled until the Administrator has issued his findings.

B. War veterans, as defined by Section 67.13a of Title 72 of the Oklahoma Statutes, who have been awarded the Purple Heart or have a service-incurred disability rated by the Veterans Administration or a branch of the Armed Forces of the United States and who have been a resident of Oklahoma for at least one (1) year prior to the date of the examination, shall be authorized to open any closed register established by the Merit System of Personnel Administration.

C. Subsection A of this section shall not apply to special disabled veterans who are considered for employment under the provisions of Sections 401 through 404 of Title 72 of the Oklahoma Statutes. Provided, said veterans may elect instead to be considered for employment according to the procedures set out in this section.

SECTION 26. REPEALER 75 O.S. 1981, Section 325, as last amended by Section 6, Chapter 144, O.S.L. 1986 (75 O.S. Supp. 1986, Section 325), is hereby repealed.

SECTION 27. RECODIFICATION 75 O.S. 1981, Sections 301, as last amended by Section 11, Chapter 196, O.S.L. 1985 (75 O.S. Supp. 1986, Section 301), and 324 shall be recodified respectively as Sections 250.3 and 250.5 of Title 75 of the Oklahoma Statutes, unless there is created a duplication in numbering.

Approved June 30, 1987.

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