

US EPA ARCHIVE DOCUMENT

# OKLAHOMA STATUTES

## 1991

COMPRISING ALL LAWS OF A GENERAL AND PERMANENT  
NATURE INCLUDING LAWS AND AMENDMENTS PASSED  
BY THE FIRST EXTRAORDINARY AND FIRST REGULAR  
SESSIONS OF THE FORTY-THIRD LEGISLATURE, 1991

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Volume 5

Titles 69 to End

**Roads, Bridges and Ferries—Workers'  
Compensation**

Oklahoma Statutes Annotated Classification

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disparage, vest or divest, or in any way affect any right or interest of the United States, the State of Oklahoma, any of the Five Civilized Tribes, or other Tribes or Nations of Indians within the State of Oklahoma.

Laws 1972, c. 19, § 1, emerg. eff. Feb. 7, 1972.

1 Sections 171 to 183 of this title.

Statutes ⇐145, 167(2).

§ 185. Adoption of Oklahoma Statutes 1981 as official Code and Revised Statutes—Construction

The Oklahoma Statutes 1981, compiled and indexed under the provisions of Sections 171 through 181 of Title 75 of the Oklahoma Statutes, and compiled under the supervision of the Justices of the Supreme Court of the State of Oklahoma and approved by them on February 18, 1982, said Oklahoma Statutes contained in four volumes, are hereby adopted as the official Code and Revised Statutes of the State of Oklahoma to be known as Oklahoma Statutes 1981. Provided, however, that this section shall not be construed to repeal or in any way affect or modify any special or local laws or any law making an appropriation or any law relating to any special election or validating act or any law affecting any bond issue or by which any bond issue may have been authorized, nor to affect any pending proceedings or any existing rights or remedies, nor the running of the statutes of limitations in force at the time of the approval of this section. Provided, further, that this section shall not be construed to alter, change, impair, disparage, vest or divest, or in any way affect any right or interest of the United States, the State of Oklahoma, any of the Five Civilized Tribes, or other Tribes or Nations of Indians within the State of Oklahoma.

Laws 1982, c. 356, § 1, emerg. eff. June 2, 1982.

Statutes ⇐38.

CHAPTER 7.—STATE AGENCY RULES AND REGULATIONS [TRANSFERRED]

*The provisions of this chapter have been transferred to Chapter 8, Administrative Procedures Act. See § 250 et seq. of this title.*

CHAPTER 8.—ADMINISTRATIVE PROCEDURES

ADMINISTRATIVE PROCEDURES ACT

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ADMINISTRATIVE PROCEDURES ACT

MODEL STATE ADMINISTRATIVE  
PROCEDURE ACT

REVISED 1961 ACT

*Table of Jurisdictions Wherein 1961 Act Has Been Adopted*

Jurisdiction	Statutory Citation
Alabama	Code 1975, §§ 41-22-1 to 41-22-27.
Arizona	A.R.S. §§ 41-1001 to 41-1066.
Arkansas	A.C.A. §§ 25-15-201 to 25-15-214.
Connecticut	C.G.S.A. §§ 4-166 to 4-189.
District of Columbia	D.C.Code 1981, §§ 1-1501 to 1-1510.
Georgia	O.C.G.A. §§ 50-13-1 to 50-13-22.
Hawaii	HRS §§ 91-1 to 91-18.
Idaho	I.C. §§ 67-5201 to 67-5219.
Illinois	S.H.A. ch. 127, ¶¶ 1001 to 1021.
Iowa	I.C.A. §§ 17A.1 to 17A.33.
Louisiana	LSA-R.S. 49:950 to 49:970.
Maine	5 M.R.S.A. §§ 8001 to 11008.
Maryland	Code, State Government, § 10-201 et seq.
Michigan	M.C.L.A. §§ 24.201 to 24.315.
Mississippi	Code 1972, §§ 25-43-1 to 25-43-19.
Missouri	V.A.M.S. §§ 536.010 to 536.150.
Montana	MCA 2-4-101 to 2-4-711.
Nebraska	R.R.S.1943, §§ 84-901 to 84-920.
Nevada	N.R.S. 233B.010 to 233B.150.
New York	McKinney's State Administrative Procedure Act § 100 et seq.
Oklahoma	75 O.S.1981 §§ 250.3 to 250.5, 302 to 323.
Oregon	ORS 183.310 et seq.
Rhode Island	Gen.Laws 1956, §§ 42-35-1 to 42-35-18.
South Dakota	SDCL 1-26-1 to 1-26-41.
Tennessee	T.C.A. § 4-5-101 et seq.
Vermont	3 V.S.A. §§ 801 to 849.
West Virginia	Code, 29A-1-1 to 29A-7-4.
Wisconsin	W.S.A. 227.01 to 227.60.
Wyoming	W.S.1977, §§ 16-3-101 to 16-3-115.

§ 250. Short title

Sections 250.1 through 323 of this title shall be known and may be cited as the "Administrative Procedures Act".  
Laws 1987, c. 207, § 1; Laws 1989, c. 360, § 1, emerg. eff. June 3, 1989.

§ 250.1. Composition of act

A. The Administrative Procedures Act<sup>1</sup> shall be composed of two Articles. Article I relating to agency filing and publication requirements for rules shall consist of Sections 250.3 through 308.2 of this title. 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 250.4 of this title, all agencies shall comply with the provisions of Article I and Article II of the Administrative Procedures Act.

Laws 1987, c. 207, § 2; Laws 1989, c. 360, § 2, emerg. eff. June 3, 1989.

<sup>1</sup> Sections 250 et seq. and 301 et seq. of this title.

ARTICLE I

§ 250.2. Legislative intent

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.

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

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

5. The right to disapprove a proposed rule or amendment to a rule during the legislative review period independent of any action by the Governor by a concurrent resolution.

Laws 1987, c. 207, § 3; Laws 1991, c. 326, § 1, eff. July 1, 1991.

THE OKLAHOMA DEPARTMENT OF LIBRARIES

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§ 250.3. Definitions

As used in the Administrative Procedures Act:<sup>1</sup>

1. "Agency" means any constitutionally or statutorily created state board, bureau, commission, department, authority, public trust in which the state is a beneficiary, or interstate commission, except:
  - a. The Legislature or any branch, committee or officer thereof; and
  - b. The courts;
2. "Rule" means any agency statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment or revocation of an effective rule but does not include:
  - a. the issuance, renewal, denial, suspension or revocation or other sanction of an individual specific license;
  - b. the approval, disapproval or prescription of rates;
  - c. statements and memoranda concerning only the internal management of an agency and not affecting private rights or procedures available to the public;
  - d. declaratory rulings issued pursuant to Section 307 of this title; or
  - e. orders resulting from individual proceedings;
3. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law;
4. "Rulemaking" means the process employed by an agency for the formulation of a rule;
5. "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 the exclusion described in subparagraph d of paragraph 2 of this section;
6. "Individual proceeding" means the process employed by an agency for the formulation of an order;
7. "Party" means a person or agency named and participating, or properly seeking and entitled by law to participate, in an individual proceeding;
8. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency;

9. "Adopted" means that a proposed rule has been approved by the agency but has not been reviewed by the Legislature and the Governor;

10. "Final or finally adopted" means a rule other than an emergency rule, which has been approved by the Legislature, and by the Governor or approved by the Legislature pursuant to subsection F of Section 308 of this title and otherwise complies with the requirements of the Administrative Procedures Act but has not been published pursuant to Section 255 of this title;

11. "Promulgated rule" means a finally adopted rule which has been filed and published in accordance with the provisions of the Administrative Procedures Act, an emergency rule or preemptory rule which has been approved by the Governor;

12. "Office" means the Office of the Secretary of State; and

13. "Secretary" means the Secretary of State. Laws 1983, c. 327, § 2; Laws 1985, c. 196, § 11, operative July 1, 1985; Laws 1987, c. 207, § 11. Renumbered from § 301 by Laws 1987, c. 207, § 27. Laws 1988, c. 292, § 1, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 3, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 1, eff. July 1, 1991.

<sup>1</sup>Sections 250 et seq. and 301 et seq. of this title.

§ 250.4. Compliance with Administrative Procedures Act—Exemptions

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, Section 250.3 of this title.

2. The Corporation Commission shall be required to comply with the provisions of Article I of the Administrative Procedures Act except for subsections A, B, C and F of Section 303 of this title and Section 306 of this title. To the extent of any conflict or inconsistency with Article I of the Administrative Procedures Act, pursuant to Section 35 of Article IX of the Oklahoma Constitution, it is expressly declared that Article I of the Administrative Procedures Act is an amendment to and alteration of Sections 18 through 34 of Article IX of the Oklahoma Constitution.

3. The Oklahoma Military Department shall be exempt from the provisions of Article I of the Administrative Procedures Act to the extent it exercises its responsibility for military affairs.

4. The Oklahoma Ordnance Works Authority shall be exempt from Article I of the Administrative Procedures Act.

5. The Oklahoma Transportation Commission and the Oklahoma Department of Transportation shall be exempt from Article I of the Administrative Procedures Act to the extent they exercise their authority in adopting standard specifications, special provisions, plans, design standards, testing procedures, federally imposed requirements and generally recognized standards, project planning and pro-

gramming, and the operation and control of the State Highway System.

6. The Oklahoma State Regents for Higher Education shall be exempt from Article I of the Administrative Procedures Act with respect to:

- a. prescribing standards of higher education,
- b. prescribing functions and courses of study in each institution to conform to the standards,
- c. granting of degrees and other forms of academic recognition for completion of the prescribed courses,
- d. allocation of state-appropriated funds, and
- e. fees within the limits prescribed by the Legislature.

7. Until January 1, 1992, the Boards of Regents and institutions they govern shall be exempt from Article I of the Administrative Procedures Act except for Sections 250.3, 251, 252, 254, the notice and publication requirements of Section 303, 308.2 of this title and Sections 256.1 and 256.2 of this title.

Within twenty (20) days of final adoption of a rule the Board of Regents or any institution governed by a Board of Regents finally adopting a rule shall submit two copies of the rule so adopted to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate. Rules adopted by the Board of Regents or rules adopted by an institution governed by the Board of Regents shall be considered finally adopted at the time such rules are approved by the Board of Regents or such institution as applicable.

8. The Commissioner of Public Safety shall be exempt from Section 253, subsections C and D of Section 303 and Sections 303.1, 307.1, 308 and 308.1 of this title insofar as it is necessary to adopt rules under the Oklahoma Hazardous Materials Transportation and Motor Carrier Act,<sup>1</sup> to maintain a current incorporation of federal motor carrier safety and hazardous material regulations for which the Commissioner has no discretion when the state is mandated to adopt rules identical to federal rules and regulations. Such rules may be adopted by the Commissioner and shall be deemed promulgated twenty (20) days after notice of adoption is published in The Oklahoma Register. Such publication need not set forth the full text of the rule but may incorporate the federal rules and regulations by reference. Provided, for any rules for which the Commissioner has discretion to allow variances, tolerances or modifications from the federal rules and regulations, the Commissioner shall fully comply with Article I of the Administrative Procedures Act.

B. As specified, the following agencies or classes of agency activities are not required to comply with the provisions of Article II of the Administrative Procedures Act:<sup>2</sup>

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 the 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 upon any alleged infraction by a student of rules of such institutions, with a lesser penalty than expulsion, such student shall be entitled to such due process, including notice and hearing, as may be otherwise required by law, and the following grounds of misconduct, if properly alleged in disciplinary proceedings against a student, shall be cause to be barred from the campus and be removed from any college or university-owned housing, upon conviction in a court of law:
  - a. participation in a riot as defined by the penal code,<sup>3</sup>
  - b. possession or sale of any drugs or narcotics prohibited by the penal code, or
  - c. willful destruction of or willful damage to state property;
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,
  - 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 drivers' license hearings and hearings

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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;<sup>4</sup>

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

14. The Oklahoma Military Department; and

15. The Oklahoma Transportation Commission and the Oklahoma Department of Transportation until January 1, 1990.

Laws 1987, c. 207, § 12; Laws 1987, c. 236, §§ 125, 203, emerg. eff. July 20, 1987; Laws 1988, c. 292, § 2, emerg. eff. July 1, 1988; Laws 1990, c. 136, § 1, emerg. eff. April 25, 1990; Laws 1990, c. 300, § 2, emerg. eff. May 30, 1990.

<sup>1</sup> Section 230.1 et seq. of title 47.

<sup>2</sup> Section 309 et seq. of this title.

<sup>3</sup> Section 1 et seq. of title 21.

<sup>4</sup> Section 451 et seq. of title 71.

Section 203 of Laws 1987, c. 236 repealed § 5 of Laws 1987, c. 231 which added another § 250.4 relating to compliance with the Administrative Procedures Act.

**§ 250.5. Act not to apply to certain governments, authorities, etc.**

This Act<sup>1</sup> shall not apply to municipalities, counties, school districts, and other agencies of local government; nor to specialized agencies, authorities, and entities created by the legislature, performing essentially local functions, such as, but not limited to, Urban Renewal Authorities, Port Authorities, City and City-County Planning Commissions, Conservancy and other Districts, and public trusts having a municipality or county, or agency thereof, as beneficiary; but this Act shall apply to public trusts having the State, or any department or agency thereof, as beneficiary.

Laws 1963, c. 371, § 24. Renumbered from § 324 by Laws 1987, c. 207, § 27.

<sup>1</sup> Section 250.1 et seq. of this title.

Administrative Law and Procedure ⇐2.

**Construction and application**

Application of Oklahoma Turnpike Authority, Okl., 416 P.2d 860.

**§ 250.6. Commission for Human Services—Preemptive rules—Certification by Governor—Filing of certificate and rule—Publication—Disapproval by Legislature—Exemptions**

A. 1. The Commission for Human Services may promulgate a preemptive rule pursuant to the provisions of this section:

- a. When the Commission for Human Services is required by federal law, federal rules, a state law enacted pursuant to federal law or federal rule, or order of a court of competent jurisdiction to adopt a

rule, or an amendment, revision or revocation of an existing rule; and

- b. Which if such rule is not immediately adopted would result in the imposition of a financial penalty, or a reduction, withholding or loss of federal funds; and
- c. Such preemptive rule has been certified by the Governor pursuant to this section.

2. The conditions specified in this subsection for the promulgation of a preemptive rule shall be the only conditions authorized for promulgation of such rule by the Commission for Human Services.

B. 1. Upon the adoption of such preemptive rule by the Commission, the Director of Human Services shall request the Governor to certify that such rules are required to comply with a federal law, federal rule, a state law enacted pursuant to federal law or rule, or order of a court of competent jurisdiction and which if such rules are not immediately adopted would result in a financial penalty, or a reduction, withholding or loss of federal funds.

2. Upon the filing of the request for certification of a preemptive rule, the Governor shall review such rule and decide as to whether such rule should be certified. Failure of the Governor to certify such rule within fourteen (14) calendar days shall constitute denial of the rule as a preemptive rule.

3. Upon certification of a preemptive rule, the Governor shall immediately notify the Commission. Upon receipt of notice of the certification of the preemptive rule, the Commission shall file the number of copies specified by the Secretary of the certification certificate issued by the Governor and the number of copies specified by the Secretary of the preemptive rule with the Office pursuant to Section 251 of Title 75 of the Oklahoma Statutes.

4. The Governor's certification and the preemptive rule shall be published in accordance with the provisions of Section 255 of Title 75 of the Oklahoma Statutes in the next publication of The Oklahoma Register following adoption of the preemptive rule.

5. For informational purposes only, a copy of the Governor's certification and the preemptive rule shall be submitted by the Commission to the Speaker of the House of Representatives and the President Pro Tempore of the Senate within ten (10) days of the certification of the preemptive rule by the Governor.

6. Upon certification by the Governor, the rule shall be considered promulgated and shall be in force immediately or unless a later date is required by statute or specified in the rule, the later date is the effective date.

C. A preemptive rule shall be considered to be a permanent rule and shall remain in full force and effect unless and until specifically disapproved during the first thirty (30) calendar days of the next

regular legislative session following promulgation of such preemptive rule or unless an earlier expiration date is specified by the Commission. The Legislature may disapprove such rule pursuant to Section 308 of this title. Any resolution introduced for the purpose of disapproving such rule shall not be subject to regular legislative cut off dates.

D. Preemptive rules promulgated pursuant to the provisions of this section shall be exempt from the provisions of Sections 253, 303, 304, 307.2, 308 and 308.1 of Title 75 of the Oklahoma Statutes. Laws 1988, c. 266, § 25, operative July 1, 1988; Laws 1990, c. 300, § 3, eff. July 1, 1991; Laws 1991, c. 326, § 2, eff. July 1, 1991.

**§ 250.7. Conflicts between filed rules and published rules—Corrections of errors—Status of code rules—Presumption of compliance with act**

A. Prior to publication in the Code or any of its supplements, in cases where there is a conflict between the finally adopted rules filed with the Office pursuant to Section 251 of Title 75 of the Oklahoma Statutes and rules published in The Oklahoma Register, the rules published in The Oklahoma Register pursuant to Section 255 of Title 75 of the Oklahoma Statutes shall govern and shall constitute the official rule of the agency. Except as provided in subsection C of this section, permanent rules published in The Oklahoma Register shall be void and of no effect upon publication of the next succeeding Code or Code supplement, if not published in such Code or Code supplement.

B. The Secretary is authorized to establish procedures for correcting scrivener, citation and spelling errors in:

1. the finally adopted rules of any agency or any document submitted for publication in The Oklahoma Register or the Code; or
2. any rules or other document published in The Oklahoma Register.

C. Rules published in the Code and in the supplements thereto, and permanent rules published in The Oklahoma Register after the closing date for publication in the last preceding Code or Code supplement, as announced by the Secretary, but prior to publication of the next succeeding Code or Code supplement, shall constitute the official permanent rules of the state.

D. For any rule published in the Code or the supplements thereto, there shall be a rebuttable presumption that such rule has been promulgated in compliance with the Administrative Procedures Act.<sup>1</sup>

Laws 1988, c. 292, § 3, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 4, eff. July 1, 1991; Laws 1991, c. 326, § 3, eff. July 1, 1991.

<sup>1</sup> Sections 250 et seq. and 301 et seq. of this title.

**§ 250.8. Time computations**

In computing any period of time prescribed or allowed by the Administrative Procedures Act,<sup>1</sup> the day of the act, or event, from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes or any other day when the receiving office does not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes, or any other day when the receiving office does not remain open for public business until 4:00 p.m. Laws 1989, c. 360, § 4, emerg. eff. June 3, 1989.

<sup>1</sup> Sections 250 et seq. and 301 et seq. of this title.

**§ 250.9. Transfer of powers, duties and responsibilities of Director of Department of Libraries relating to publication of The Oklahoma Register and Administrative Code to Secretary of State**

A. Effective July 1, 1991, all of the powers, duties and responsibilities of the Director of the Department of Libraries and the Department of Libraries relating to the publication of The Oklahoma Register and the Administrative Code are hereby transferred to the Office of the Secretary of State together with all unexpended funds, property, records, current agency rules, personnel and any outstanding financial obligations or encumbrances, exclusively or principally pertaining to such publications.

B. The Director of State Finance is hereby directed to coordinate the transfer of funds, allotments, purchase orders, outstanding financial obligations or encumbrances provided for in this section.

C. Any rules promulgated by the Director of the Department of Libraries shall be and remain in effect until amended or new rules are promulgated by the Secretary.

D. Any rules adopted by the Director of the Department of Libraries related to the administration of the Administrative Procedures Act<sup>1</sup> and subject to review by the Legislature during the 1991 regular session of the Legislature may be finally adopted and promulgated by the Secretary of State pursuant to the Administrative Procedures Act.

E. Until January 1, 1992, the Director of the Department of Libraries shall provide, as specified by the Secretary, direct assistance and resources to the Secretary and the Office of Administrative Rules for the compilation and completion of the preparation necessary for the publication of the Oklahoma Administrative Code<sup>2</sup> and for the publication of The Oklahoma Register.<sup>3</sup> Such assistance and resources shall be provided at the same level as was provided for such compilation and preparation

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of the Code and publication of The Oklahoma Register within the last half of the 1991 fiscal year.

F. There is hereby established an Office of Administrative Rules within the Office of the Secretary of State. The Office of Administrative Rules shall have the primary responsibility for publishing The Oklahoma Register and the Oklahoma Administrative Code and otherwise implementing the provisions of Article I of the Administrative Procedures Act. The Secretary of State shall provide for the adequate staffing of the Office to implement the provisions of this section including but not limited to an editor-in-chief.

Laws 1990, c. 300, § 5, eff. July 1, 1991; Laws 1991, c. 326, § 4, eff. July 1, 1991.

<sup>1</sup> Sections 250 et seq. and 301 et seq. of this title.

<sup>2</sup> Section 256 of this title.

<sup>3</sup> Section 255 of this title.

**§ 251. Furnishing copies of permanent rules—Rules for administration of section—Filing of new rules and amendments, revisions or revocations—Format—Incorporation of standards by reference—Publication of executive orders—Electronic filing**

A. 1. Upon the request of the Secretary, each agency shall furnish to the Office a complete set of its permanent rules in such form as is required by the Secretary or as otherwise provided by law.

2. The Secretary shall promulgate rules to ensure the effective administration of the provisions of Article I of the Administrative Procedures Act.<sup>1</sup> The rules shall 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 the Administrative Procedures Act<sup>2</sup> or such other requirements as deemed necessary by the Secretary to implement the provisions of the Administrative Procedures Act.

B. 1. Each agency shall file the number of copies specified by the Secretary 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 Office within thirty (30) calendar days after they become finally adopted.

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, amends an existing permanent rule or repeals an existing permanent rule. If a rule amends 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 state if the rule supersedes an existing emergency rule;
- e. shall include a reference to any rule requiring a new or revised form in a note to the rule. The Secretary shall insert that reference in The Oklahoma Register as a notation to the affected rule;
- f. shall prepare, in plain language, an analysis of new or amended rules. The analysis shall include but not be limited to a reference to any statute that the rule interprets, any related statute or any related rule;
- g. 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;
- h. shall include other information, in such form and in such manner as is required by the Secretary; and
- i. may change the format of existing rules without any rulemaking action by the agency in order to comply with the standard provisions established by the Secretary for Code and register publication so long as there is no substantive change to the rule.

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

D. In order to avoid unnecessary expense, an agency may use the published standards established by organizations and technical societies of recognized national standing, other state agencies, or federal agencies by incorporating the standards or rules 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 standards shall be readily available to the public for examination at the administrative offices of the agency. 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.<sup>3</sup>

E. The Secretary shall provide for the publication of all Executive Orders received pursuant to the provisions of Section 664 of Title 74 of the Oklahoma Statutes.

F. The Secretary may authorize the filing of rules or Executive Orders by or through electronic data or machine readable equipment in such form and manner as is required by the Secretary. Laws 1961, p. 602, § 1; Laws 1984, c. 154, § 1, eff. Nov. 1, 1984; Laws 1987, c. 207, § 4; Laws 1988, c. 292, § 4, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 5, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 6, eff. July 1, 1991; Laws 1991, c. 326, § 5, eff. July 1, 1991.

<sup>1</sup> Section 250.2 et seq. of this title.

<sup>2</sup> Sections 250 et seq. and 301 et seq. of this title.

<sup>3</sup> Section 151 et seq. of title 67.

#### Validity

State ex rel. Villines v. Freeman, Okl., 370 P.2d 307 (1962).

#### Construction and application

Proper administrative procedure requires that the rights of parties and the procedure of the agency on hearings be made the subject of agency regulation so that the parties may be advised of their rights. Adams v. Professional Practices Commission, Okl., 524 P.2d 932 (1974).

#### Rules subject to publication

State ex rel. Villines v. Freeman, Okl., 370 P.2d 307 (1962).

#### § 252. Filing as condition of validity—Notification of failure to comply

A. Any rule, amendment, revision, or revocation of an existing rule made by an agency on or after October 16, 1987, may be held void and of no effect pursuant to Sections 306 and 307 of this title. 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, amendment, revision, or revocation of an existing rule promulgated pursuant to the provisions of the Administrative Procedures Act.<sup>1</sup>

B. Upon failure of an agency to comply with the provisions of Sections 251 through 256 of this title except when not applicable, the Secretary 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.

Laws 1961, p. 603, § 2; Laws 1987, c. 207, § 5; Laws 1988, c. 292, § 5, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 6, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 7, eff. July 1, 1991.

<sup>1</sup> Sections 250 et seq. and 301 et seq. of this title.

#### Filing rules

State ex rel. Villines v. Freeman, Okl., 370 P.2d 307 (1962).

#### § 253. Emergency rules

A. If an agency finds that an imminent peril to the preservation of the public health, safety, welfare, or other compelling extraordinary circumstance requires an emergency rule, amendment, revision, or revocation of an existing rule, an agency may promulgate, at any time, any such rule, provided the Governor first approves such rule pursuant to the provisions of this section.

B. An emergency rule adopted by an agency shall:

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

2. 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 approved. Prior to approval of emergency rules, the Governor shall submit the emergency rule to the Secretary of State for review of proper formatting.

2. If the Governor disapproves the adopted emergency rule, the Governor shall return the entire document to the agency with reasons for the disapproval. If the agency elects to modify such rule, the agency shall make such modifications and resubmit the rule to the Governor for approval.

3. Emergency rules adopted by an agency or approved by the Governor shall be subject to review pursuant to the provisions of Section 306 of this title.

D. 1. Upon approval by the Governor, an emergency rule shall be considered promulgated and shall be in force immediately, or on such later date as specified therein.

2. The Governor shall have forty-five (45) calendar days to review the emergency rule. Within the forty-five-calendar day period, the Governor may approve the emergency rule or disapprove the emergency rule. Failure of the Governor to approve an emergency rule within the specified period shall constitute disapproval of the emergency rule.

E. 1. Upon approval of an emergency rule, the Governor shall immediately notify the agency and file the number of copies required by the Secretary of the written approval and the number of copies required by the Secretary of the emergency rule with the Director.

2. A copy of the Governor's approval and the emergency rule shall be submitted by the agency to the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

3. The Governor's approval and the emergency rule shall be published in accordance with the provisions of Section 255 of this title in the next publication of The Oklahoma Register following the approval by the Governor.

F. An emergency rule may be promulgated when the Legislature is not in session provided such emergency rule shall be effective from the date of approval by the Governor or a later date as specified in the approved emergency rule through the first day of the next succeeding Regular Session of the Oklahoma Legislature, after the promulgation of such emergency rule, and shall be in full force and effect for the term of such session unless it is made ineffective pursuant to subsection H of this section.

G. An emergency rule may be promulgated when the Legislature is in session provided such emergency rule shall be effective from the date of approval of the emergency rule by the Governor or a later date as specified in the approved emergency rule, unless otherwise specifically provided by the Legislature through the first day of the next succeeding Regular Session of the Oklahoma Legislature, after the promulgation of such emergency rule, and shall be in full force and effect for the term of such session unless it is made ineffective pursuant to subsection H of this section.

H. 1. 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 303 through 308.2 of this title.

2. Any promulgated emergency rule shall be made ineffective if:

- a. disapproved by the Legislature;
- b. superceded by the promulgation of permanent rules;
- c. any adopted rules based upon such emergency rules are subsequently disapproved pursuant to Section 308 of this title; or
- d. an earlier expiration date is specified by the agency in the rules.

3. 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. An agency shall not adopt any emergency rule which has become null and void because of sine die adjournment of the Legislature as a new emergency rule or adopt any emergency rules of similar scope or intent as the emergency rules which became null and void because of sine die adjournment of the Legislature for the purpose of evading the requirements of the Administrative Procedures Act.<sup>1</sup>

I. Emergency rules shall not become effective unless approved by the Governor pursuant to the provisions of this section.

J. 1. The requirements of Section 303 of this title relating to notice, hearing and rule impact statement shall not be applicable to emergency rules promulgated pursuant to the provisions of this section. Provided this shall not be construed to prevent an abbreviated notice and hearing process or preparation of a rule impact statement determined to be necessary by an agency.

2. The rule report required pursuant to Sections 303.1 and 308 of this title shall not be applicable to emergency rules promulgated pursuant to the provisions of this section. Provided this shall not be construed to prevent an agency from complying with such requirements at the discretion of such agency.

3. The statement of submission required by Sections 303.1 and 308 of this title shall not be applicable to emergency rules promulgated pursuant to the provisions of this section.

Laws 1961, p. 603, § 3; Laws 1987, c. 207, § 6; Laws 1988, c. 292, § 7, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 7, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 8, eff. July 1, 1991; Laws 1991, c. 326, § 6, eff. July 1, 1991.

<sup>1</sup> Sections 250 et seq. and 301 et seq. of this title.

Administrative Law and Procedure ⇐101, 381.

States ⇐67.

§ 254. Attestation of rules—Certification of publication—Copies—Preservation

A. Prior to the submission to the Governor of emergency rules, or prior to the transmission of a finally adopted rule to the Secretary, the rulemaking authority or its designee shall attest:

1. to the correctness of copies of any rule and any amendment, revision, or revocation thereof; and

2. that such rules were made and adopted if the rules are emergency rules or finally adopted if the rules are permanent rules in substantial compliance with the Administrative Procedures Act.<sup>1</sup>

Such attested rules shall then be transmitted to the Secretary or if the rules are emergency to the Governor's office, for filing and publication pursuant to the Administrative Procedures Act.

B. Upon publication of such transmitted rules pursuant to Section 255 of this title, the Secretary shall certify to the agency that such rules have been published. The Secretary 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.<sup>2</sup>

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

Laws 1961, p. 603, § 4; Laws 1987, c. 207, § 7; Laws 1988, c. 292, § 8, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 9, eff. July 1, 1991.

<sup>1</sup> Sections 250 et seq. and 301 et seq. of this title.

<sup>2</sup> Section 24A.1 et seq. of title 51.

**§ 255. Publication of The Oklahoma Register—Publication of rules and regulations**

A. The Secretary is hereby authorized, directed, and empowered to publish The Oklahoma Register not less than 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. Said rules or amendments, revisions, or revocations of existing rules shall be published in the first issue of The Oklahoma Register published pursuant to Sections 251, 253, 256, 303, 303.1 and 308 of this title after the date of acceptance by the Secretary. The Secretary shall cause a copy of each publication of The Oklahoma Register 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 Secretary may charge recipients of the publication a cost sufficient to defray the cost of publication and mailing. The Secretary shall cause a copy of all rules, all new rules, and all amendments, revisions, or revocations of existing rules to be on file and available for public examination in the Office 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 Secretary shall promulgate rules to systematize the designations of rules. To establish said system or to preserve uniformity of designations, the Secretary may require the agency to change the title or numbering of any rule or any amendment, revision, or revocation thereof.

B. The Secretary is authorized to provide for the publication of rules in summary form when the rules are of such length that publication of the full text would be too costly. The summary shall be prepared by the agency submitting the rules and shall state 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 be published in The Oklahoma Register prior to the adoption of a new rule, or amendment, revision or revocation of any existing rule. The notice shall include the information required by Section 303 of this title.

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<sup>1</sup> shall be considered promulgated.

Laws 1961, p. 603, § 5; Laws 1983, c. 76, § 1, eff. Nov. 1, 1983; Laws 1987, c. 207, § 8; Laws 1988, c. 292, § 9, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 8, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 10, eff. July 1, 1991.

<sup>1</sup> Sections 250 et seq. and 301 et seq. of this title.  
Administrative Law and Procedure ⇐407 to 409.

**Construction and application**

State ex rel. Pollution Control Coordinating Bd. v. Kerr-McGee Corp., Okl., 619 P.2d 858 (1980).

**§ 256. Oklahoma Administrative Code—Publication—Task Force on Administrative Rules**

A. 1. The Secretary shall provide for the codification, compilation, indexing and publication of agency rules and Executive Orders in a publication which shall be known as the Oklahoma Administrative Code<sup>1</sup> in the following manner:

- a. On or before January 1, 1992, the Secretary shall compile Executive Orders which are effective pursuant to paragraph 3 of subsection B of this section, and agency rules which have been submitted pursuant to the agency schedule of compliance and have been accepted as properly codified, as set forth in this section, Sections 256.1 and 256.2 of this title, and rules promulgated by the Secretary. Such compilation shall be maintained by the Office of Administrative Rules and shall be updated by agencies, in a manner prescribed by the Secretary, to reflect subsequent permanent rulemaking. Prior to publication of the first Code, as set forth in subparagraph b of this paragraph, the compilation shall constitute the official permanent rules of the state. Effective January 1, 1992, any permanent rule not included in such compilation shall be void and of no effect.
- b. On or before July 1, 1992, the Secretary shall provide for the indexing and publication of all codified agency rules and Executive Orders in the Oklahoma Administrative Code. Any permanent rule not published in the first Code shall be void and of no effect. A finally adopted rule filed and published in The Oklahoma Register may be valid until publication of the next succeeding Code or Code supplement following the date of its final adoption. Provided, a permanent rule which is finally adopted after the closing date for publication in a Code or Code supplement as announced by the Secretary may be valid until publication of the next succeeding Code or Code supplement. A permanent rule which is published in The Oklahoma Register after the closing date for publication in the first Code, as announced by the Secretary, shall be void and of no effect upon publication of the next succeeding Code or Code supplement, if not published in the Code or Code supplement.

2. Compilations or revisions of the Code or any part thereof shall be supplemented or revised annu-

ally. The Code shall be organized by state agency and shall be arranged, indexed and printed in a manner to permit separate publications of portions thereof relating to individual agencies.

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

4. The Code and the supplements shall include a general subject index and an agency index of all rules and Executive Orders contained therein. The supplements shall also include a sections-affected index of the Code. The Code and supplements shall contain such notes, cross references and explanatory materials as required by the Secretary.

5. The Secretary in preparing such rules for publication in the Code or supplements shall omit all material shown in canceled type. The Secretary 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.<sup>2</sup>

6. The Secretary is authorized to determine a numbering system and other standardized format for documents to be filed and may refuse to accept for publication any document that does not substantially conform to the promulgated rules of the Secretary.

B. 1. Rules submitted and accepted for publication in the Code by June 30th of each year shall be published in the next succeeding Code or supplement thereto.

2. At the beginning of each fiscal year after July 1, 1992, the Secretary 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. The Code or supplements thereto should be published as soon as possible after August 30 of each year.

3. Effective January 14, 1991, Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order. Copies of all Executive Orders shall be published and indexed in the Administrative Code. All Executive Orders placing agencies or employees under the State Merit System of Personnel Administration shall remain in effect unless otherwise modified by action of the Legislature.

C. The Secretary is hereby authorized and empowered to publish or to contract to publish an Administrative Code, and to publish or contract to publish such annual cumulative supplements 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 Secretary.

D. The Secretary is authorized to correct scrivener, citation and spelling errors in rules submitted for publication in the Code or any such supplements or in The Oklahoma Register. The Secretary, prior to publication, shall notify the affected agency of any such corrections. Any other errors in rules submitted for publication in the Code may be noted in editorial notes provided by the Secretary.

E. The Secretary shall make copies of the Code generally available at a cost sufficient to defray the cost of publication and mailing. Except as otherwise provided by Section 257.1 of this title, the Secretary is authorized to sell or otherwise distribute the Code and its supplements.

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 Secretary 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 Secretary's recommendations.

The Task Force on Administrative Rules shall be reimbursed as follows: Legislative members of the Task Force 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 Task Force 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.<sup>3</sup> Members of the Task Force 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 Task Force not held in the Oklahoma City vicinity.

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 Secretary, 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, 1991.

3. The Task Force shall terminate on January 1, 1993.

Laws 1961, p. 604, § 6; Laws 1978, c. 165, § 13; Laws 1987, c. 207, § 9; Laws 1988, c. 292, § 10, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 11, eff. July 1, 1991; Laws 1991, c. 326, § 7, eff. July 1, 1991.

<sup>1</sup> 301 et seq. of this title.

<sup>2</sup> Sections 250 et seq. and 301 et seq. of this title.

<sup>3</sup> Section 500.1 et seq. of title 74.

Administrative Law and Procedure ⇨ 407 to 409.

#### § 256.1. Deletion of obsolete rules and policy statements

A. It is recognized by the Oklahoma Legislature that many agencies have published rules containing obsolete rules or internal policy statements or agency statements which do not meet the Administrative Procedures Act<sup>1</sup> definition of rules. Therefore, to assure that only current and official agency rules will be published in the Code, each agency shall conduct an internal review of its rules to determine whether each of its rules is current and is a rule as such term is defined by the Administrative Procedures Act. Any rule determined by an agency to be obsolete or an internal policy statement, or any agency statement which does not meet the definition of a rule pursuant to the Administrative Procedures Act may be deleted by the agency. Such deletions may be made without submission of such deletions for legislative review pursuant to Section 308 of this title and gubernatorial review pursuant to Section 303.1 of this title. Prior to such deletion, the agency shall publish in The Oklahoma Register a notice of intent to remove the rule or statement, including a summary of such rule or statement. In addition, notice of such deletion shall be submitted to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Governor, for informational purposes.

B. Any person who is aggrieved by any deletion authorized by subsection A of this section may request of the Speaker of the House of Representatives, the President Pro Tempore of the Senate or the Governor that action be taken to prevent the deletion of such rule or to require the reinstatement of such rule.

C. The provisions of this section shall not be construed to authorize any agency to amend any rule, or to delete any rule which affects any private rights or procedures available to the public.

D. Agency compliance with this section shall be coordinated in accordance with a schedule established by the Secretary for agency submission of rules for publishing in the Code pursuant to Section 256.2 of this title. Once an agency has submitted its rules for publication in the Code according to the schedule required by the Secretary, any further deletions shall be made pursuant to the Administrative Procedures Act.

Laws 1988, c. 292, § 11, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 12, eff. July 1, 1991.

<sup>1</sup> Sections 250 et seq. and 301 et seq. of this title.

#### § 256.2. Schedule of compliance for agency submission of rules to be published in Administrative Code

The Secretary is authorized to establish pursuant to the Administrative Procedures Act<sup>1</sup> and enforce

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pursuant to Section 252 of Title 75 of the Oklahoma Statutes a schedule of compliance for agency submission of rules to be published in the Code. In developing such schedule of compliance the Secretary shall consider the number and length of rules to be submitted for publication in the Code and the time necessary for internal review of such rules to bring such rules into compliance with the Administrative Procedures Act. Each agency shall, no later than the date set forth in the schedule of compliance, furnish to the Office a complete set of its effective permanent rules in such form as is required by the Secretary.

Laws 1988, c. 292, § 12, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 13, eff. July 1, 1991.

<sup>1</sup> Sections 250 et seq. and 301 et seq. of this title.

**§ 257. Implementation of Article I of Act—  
Legal assistance**

A. Upon the request of the Secretary, the Office of the Attorney General shall provide such legal assistance to the Office as is necessary to implement the provisions of Article I of the Administrative Procedures Act.<sup>1</sup>

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.

Laws 1987, c. 207, § 10; Laws 1990, c. 300, § 14, eff. July 1, 1991.

<sup>1</sup> Sections 250 et seq. and 301 et seq. of this title.

A former § 257, derived from Laws 1961, p. 604, § 7 and relating to the effective date of the 1961 act, was repealed by Laws 1980, c. 68, § 1.

**§ 257.1. Reciprocal agreements for exchange  
of administrative codes—Offices entitled to free  
copy of Code**

A. The Secretary is authorized to enter into and make reciprocal agreements with other states to allow exchanges of administrative codes of such states.

B. 1. Each of the following offices shall be entitled to receive, as soon as available from the Secretary, without cost, one copy of the printed volumes of the Code and the supplements thereto:

- a. County clerk of each county;
- b. Clerk of the Supreme Court;
- c. Attorney General;
- d. Governor;
- e. Speaker of the House of Representatives and the President Pro Tempore of the Senate;
- f. the Research, Legal and Fiscal Divisions of the House of Representatives;
- g. the Legislative Division of the Senate; and

h. the Department of Libraries for the Law Library.

2. The Department of Libraries is authorized to obtain number of copies of the Code and the supplements thereto necessary for use for deposit with the Publications Clearinghouse pursuant to Sections 3-113.1 through 3-115 of Title 65 of the Oklahoma Statutes. The Secretary is authorized to retain sufficient copies for exchange purposes with other states for copies of their rules.

Laws 1988, c. 292, § 13, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 15, eff. July 1, 1991; Laws 1991, c. 326, § 8, eff. July 1, 1991.

§ 301. Renumbered as § 250.3 by Laws 1987, c. 207, § 27.

**§ 302. Promulgation of certain rules—Public  
inspection of rules, orders, decisions and opinions—  
Rulemaking record—Prohibited actions—  
Violations**

A. In addition to other rulemaking requirements imposed by law, each agency which has rulemaking authority, shall:

1. promulgate as a rule a description of the organization of the agency, stating the general course and method of 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 issued by the agency for use by the public;

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 pursuant to the provisions of the Open Records Act<sup>1</sup> 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 formula-

- tion, 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;
  - f. a copy of the rule and analysis of each such rule filed with the Office pursuant to Section 251 of this title;
  - g. all petitions for exceptions to, amendments of, or repeal or suspension of, the rule;
  - h. a copy of the rule impact statement, if made; and
  - i. such other information concerning such rules as may be determined necessary by the agency.

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 not otherwise authorized by the Administrative Procedures Act:<sup>2</sup>

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.

Laws 1963, c. 371, § 2; Laws 1987, c. 207, § 13; Laws 1988, c. 292, § 14, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 16, eff. July 1, 1991.

<sup>1</sup> Section 24A.1 et seq. of title 51.

<sup>2</sup> Sections 250 et seq. and 301 et seq. of this title.

Administrative Law and Procedure ←381.

## Validity

Ray v. Thompson, Okl., 458 P.2d 300 (1969).

### § 303. Adoption, amendment or repeal of rule—Procedure

A. Prior to the adoption of any rule or amendment or repeal of a rule, the agency shall:

1. Cause notice of any intended action to be published in The Oklahoma Register pursuant to subsection B of this section;

2. Send copies of the notice of such intended action to at least twenty-five newspapers in the metropolitan and rural areas for publication as public service announcements on the subjects involved at the discretion of the editors of such newspapers. The provisions of this paragraph shall not require an agency to pay for any such publication;

3. For at least twenty (20) days after publication of the notice of the intended rulemaking action, afford a comment period for all interested persons to submit data, views or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule;

4. Hold a hearing, if required, as provided by subsection C of this section;

5. 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 to vary according to the size of a business or its ability to comply or both; and

6. 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. The notice required by paragraph 1 of subsection A of this section shall include but not be limited to:

1. in simple language, a brief summary of the rule;
2. the proposed action being taken;
3. the circumstances which created the need for the rule;
4. the specific legal authority authorizing the proposed rule;
5. the intended effect of the rule;

6. the time when, the place where, and the manner in which interested persons may present their views thereon pursuant to paragraph 3 of subsection A of this section;

7. whether or not the agency intends to issue a rule impact statement according to subsection D of this section and where copies of such impact statement may be obtained for review by the public;

8. the time when, the place where, and the manner in which persons may demand a hearing on the proposed rule if the notice does not already provide for a hearing. If the notice provides for a hearing, the time and place of the hearing shall be specified in the notice; and

9. where copies of the proposed rules may be obtained for review by the public. An agency may charge persons for the actual cost of mailing a copy of the proposed rules to such persons.

The number or copies of such notice as specified by the Secretary shall be submitted to the Secretary who shall publish the notice in The Oklahoma Register pursuant to the provisions of Section 255 of this title.

Prior to or within three (3) days after publication of the notice in The Oklahoma Register, the agency shall cause a copy of the notice of the proposed rule adoption to be mailed to all persons who have made a timely request of the agency for advance notice of its rulemaking proceedings.

C. 1. If the published notice does not already provide for a hearing, an agency shall schedule a hearing on a proposed rule if, within twenty (20) days after the published notice of the proposed rule adoption, a written request for a hearing is submitted by:

- a. at least twenty-five persons,
- b. a political subdivision,
- c. an agency, or
- d. an association having not less than twenty-five members.

At that hearing persons may present oral argument, data, and views on the proposed rule.

2. A hearing on a proposed rule may not be held earlier than twenty (20) days after notice of the hearing is published pursuant to subsection B of this section.

3. The provisions of this subsection shall not be construed to prevent an agency from holding a hearing or hearings on the proposed rule although not required by the provisions of this subsection; provided that notice of such hearing shall be published in The Oklahoma Register at least twenty (20) days prior to such hearing.

D. 1. Except as otherwise provided in this subsection, an agency shall issue a rule impact statement of a proposed rule prior to or within fifteen (15) days after the date of publication of the notice of proposed rule adoption. The rule impact statement may be modified after any hearing or comment period afforded pursuant to the provisions of this section.

2. Except as otherwise provided in this subsection, the rule impact statement shall include but not be limited to:

- a. a brief description of the purpose of the proposed rule;
- b. 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;
- c. a description of the classes of persons who will benefit from the proposed rule;
- d. a description of the probable economic impact of the proposed rule upon affected classes of persons;
- e. 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;
- f. a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule; and
- g. the date the rule impact statement was prepared.

3. To the extent an agency for good cause finds the preparation of a rule impact statement 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 prior to publication of the notice of the intended rulemaking action, the rule impact statement shall be completed. The determination to waive the rule impact statement shall not be subject to judicial review.

4. The rule shall not be invalidated on the ground that the contents of the rule impact statement are insufficient or inaccurate.

5. The rule impact statement required by this section shall not be required for emergency rules provided the provisions of this paragraph shall not be construed to prevent an agency from issuing a rule impact statement for such rules.

E. Upon completing the requirements of this section, an agency may adopt a proposed rule. No rule is valid unless adopted in substantial compliance with the provisions of this section.

Laws 1963, c. 371, § 3; Laws 1982, c. 284, § 1, operative Oct. 1, 1982; Laws 1987, c. 207, § 14; Laws 1988, c. 292, § 15, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 17, eff. July 1, 1991; Laws 1991, c. 326, § 9, eff. July 1, 1991.

Administrative Law and Procedure ⇐395.

§ 303.1. Filing of rules, amendments, revisions or revocations and agency rule report with Governor

A. Within ten (10) days after adoption of a permanent rule, a copy of all such new rules or amend-

ments, revisions or revocations to an existing rule proposed by an agency, and a copy of an agency rule report as required by subsection D of this section shall be filed by the agency with the Governor for approval.

B. When the rules have been submitted to the Governor, the agency shall also submit to the Secretary for publication in The Oklahoma Register, a statement that the adopted rules have been submitted to the Governor.

C. The text of the adopted rules shall be submitted to the Governor in the same format as required by the Secretary pursuant to Section 251 of Title 75 of the Oklahoma Statutes.

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

1. the date the notice of the intended rulemaking action 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, if held, 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 or of any oral or written comments received prior to the adoption of the rule;

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 rule impact statement if required pursuant to Section 303 of Title 75 of the Oklahoma Statutes;

11. an 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 Governor.

E. The Governor shall have forty-five (45) calendar days from receipt of a rule to approve or disapprove the rule.

1. If the Governor approves the rule, the Governor shall immediately notify the agency in writing

of the approval. Notice of such approval shall be given by the agency to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and to the Secretary for publication in The Oklahoma Register.

2. If the Governor disapproves the adopted rule, the Governor shall return the entire document to the agency with reasons in writing for the disapproval. Notice of such disapproval shall be given by the agency to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and to the Secretary for publication in The Oklahoma Register. Failure of the Governor to approve a rule within the specified period shall constitute disapproval of the rule by the Governor.

F. Rules not approved by the Governor pursuant to the provisions of this section shall not become effective unless otherwise approved by the Legislature by joint resolution pursuant to subsection F of Section 308 of title.

Laws 1988, c. 292, § 17, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 9, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 18, eff. July 1, 1991.

#### § 304. Filing of adopted rules—Effective date of adopted rule or Executive Order

A. Each agency shall file copies of each rule finally adopted by it with the Secretary, as required by Section 251 of this title.

B. 1. Each rule finally adopted is effective ten (10) calendar days after publication in The Oklahoma Register pursuant to Section 255 of this title unless a later date is required by statute or specified in the rule, the later date is the effective date.

2. a. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately or at a stated date after certification by the Governor.

b. The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

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

Laws 1963, c. 371, § 4; Laws 1987, c. 207, § 15; Laws 1988, c. 292, § 16, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 19, eff. July 1, 1991.

Administrative Law and Procedure §410, 418.

#### § 305. Petition requesting promulgation, amendment or repeal of a rule—Form and procedure

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 agency shall act upon said petition within a reasonable time. If, within thirty (30) calendar days after submission

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of a petition, the agency has not initiated rulemaking proceedings in accordance with the Administrative Procedures Act,<sup>1</sup> the petition shall be deemed to have been denied.

Laws 1963, c. 371, § 5; Laws 1987, c. 207, § 16.

<sup>1</sup> Sections 250 et seq. and 301 et seq. of this title.

Administrative Law and Procedure ⇐396.

**§ 306. Validity or applicability of rules—Action—Parties—Presumption of validity—Burden of proof when rule appealed—Declaratory judgment**

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<sup>1</sup> 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.

Laws 1963, c. 371, § 6; Laws 1977, c. 114, § 1, eff. Oct. 1, 1977; Laws 1987, c. 207, § 17.

<sup>1</sup> Sections 250 et seq. and 301 et seq. of this title.

Declaratory Judgment ⇐204.

**Validity of rules**

Associated Builders and Contractors of Oklahoma v. State ex rel. Oklahoma Dept. of Labor, Okl., 628 P.2d 1156 (1981).

**§ 307. Filing and disposition of petitions for declaratory rulings—Judicial review**

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.

Laws 1963, c. 371, § 7; Laws 1987, c. 207, § 18.

Administrative Law and Procedure ⇐413, 703.

**§ 307.1. Legislative review of adopted rules and rulemaking process**

A. The Speaker of the House of Representatives and the President Pro Tempore of the Senate may each establish a rule review committee or designate standing committees of each such house to review administrative rules.

B. Such committees may meet separately or jointly at any time, during sessions of the Legislature and in the interim.

C. The function of the committees so established or designated 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.

Each committee may review all adopted rules and such other rules the committee deems appropriate and may make recommendations concerning such rules to their respective house of the Legislature, or to the agency adopting the rule, or to both their respective house of the Legislature and the agency.

D. In addition to the review of agency-adopted rules pursuant to this act,<sup>1</sup> each such 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 250.4 of this title for the purpose of improving the rulemaking process;
3. Conduct such other studies and investigations relating to rules as may be determined to be necessary by the committee; and
4. Monitor and investigate compliance of agencies with the provisions of the Administrative Procedures Act,<sup>2</sup> 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.  
Laws 1987, c. 207, § 19; Laws 1988, c. 292, § 18, emerg. eff. July 1, 1988.

<sup>1</sup> Sections 250 et seq. and 301 et seq. of this title.

<sup>2</sup> Sections 250 et seq. and 301 et seq. of this title.

§ 307.2. Repealed by Laws 1988, c. 292, § 22, emerg. eff. July 1, 1988.

From:

Laws 1987, c. 207, § 20.

§ 308. Filing of rules, amendments, revisions or revocation and agency rule report with Legislature for approval or disapproval

A. Within ten (10) days after adoption of a permanent rule, two copies of all such new rules or amendments, revisions or revocations to an existing rule proposed by an agency, and two copies of an agency rule report as required by subsection D of this section shall be filed by the agency each with the Speaker of the House of Representatives and the President Pro Tempore of the State Senate.

B. When the rules have been submitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, the agency shall also submit to the Office for publication in The Oklahoma Register, a statement that the adopted rules have been submitted to the Legislature. Such statement of submission required by this section shall not be required for emergency rules.

C. The text of the adopted rules shall be submitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate in the same format as required by the Secretary pursuant to Section 251 of this title.

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

1. the date the notice of the intended rulemaking action was published in The Oklahoma Register pursuant to Section 255 of this title;
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 if held, 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 or of any oral or written comments received prior to the adoption of the rule;

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 rule impact statement if required pursuant to Section 303 of this title;

11. an 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 Speaker of the House of Representatives, the President Pro Tempore of the Senate or either rule review committee.

E. Upon receipt of any adopted rules submitted pursuant to this section, the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall assign such rules to the appropriate committees of each such house of the Legislature for review. Except as otherwise provided by this section, upon receipt of such rules, the Legislature shall have thirty (30) legislative days to review such rules.

F. 1. By the adoption of a joint resolution, the Legislature may disapprove any rule, waive the thirty legislative day review period and approve any rule which has been transmitted as required by this section or otherwise approve any rule submitted pursuant to this section.

2. The Legislature may by concurrent resolution disapprove a proposed rule or a proposed amendment to a rule submitted to the Legislature pursuant to this section prior to such rule having the force and effect of law. Any such rule shall be disapproved by both houses of the Legislature prior to the termination of the legislative review period specified by this section. Such concurrent resolution shall not require the approval of the Governor, and any such rule so disapproved shall be invalid and of no effect regardless of the approval of the Governor of such rule. A concurrent resolution may also be used to waive the thirty legislative day review period.

G. Whenever a rule is disapproved as provided in subsection F of this section, the agency adopting such rules shall not have authority to resubmit an identical rule, except during the first sixty (60) calendar days of the next regular legislative session. Rules may be disapproved in part or in whole by the Legislature. Any resolution enacted disapproving a rule shall be filed with the Secretary for publication in The Oklahoma Register.

H. Unless otherwise provided by specific vote of the Legislature, resolutions introduced for purposes of disapproving or approving a rule shall not be

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subject to regular legislative cutoff dates, shall be limited to such provisions as may be necessary for disapproval or approval of a rule and, shall contain no other provisions.

I. 1. Transmission of a rule for legislative review pursuant to the provisions of this section on or before April 1 of each year shall result in the approval of such rule by the Legislature if:

- a. the Legislature is in regular session and has failed to disapprove such rule within thirty (30) legislative days after such rule has been so transmitted pursuant to subsection A of this section; or
- b. the Legislature has adjourned before the expiration of said thirty (30) legislative days of submission of such rules, and has failed to disapprove such rule.

2. After April 1 of each year, transmission of a rule for legislative review pursuant to the provisions of this section shall result in the approval of such rule by the Legislature only if the Legislature is in regular session and has failed to disapprove such rule within thirty (30) legislative days after such rule has been so transmitted. In the event the Legislature adjourns before the expiration of such thirty (30) legislative days, such rule shall carry over for consideration by the Legislature during the next regular session and shall be considered to have been originally transmitted to the Legislature on the first day of said next regular session for review pursuant to this section. As an alternative, an agency may request direct legislative approval of such rules and the Legislature may approve such rule as provided by paragraph 1 of subsection F of this section. An agency may also adopt emergency rules under the provisions of Section 253 of this title.

J. Prior to final adoption of a rule, an agency may withdraw from legislative review a rule submitted pursuant to the provisions of this section. Notice of such withdrawal shall be given to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and to the Secretary for publication in The Oklahoma Register.

K. Except as otherwise provided by Sections 253, 250.4 and 250.6 of this title or as otherwise specifically provided by the Legislature, no agency shall promulgate any rule unless reviewed by the Legislature pursuant to this section. An agency may promulgate an emergency rule only pursuant to Section 253 of this title.

L. Any rights, privileges, or interests gained by any person by operation of an emergency rule, shall not be affected by reason of any subsequent disap-

proval or rejection of such rule by either house of the Legislature.

Laws 1963, c. 371, § 8; Laws 1975, c. 289, § 1, emerg. eff. June 5, 1975; Laws 1978, c. 253, § 1, emerg. eff. May 1, 1978; Laws 1981, c. 48, § 1; Laws 1982, c. 18, § 1, emerg. eff. March 23, 1982; Laws 1987, c. 207, § 21; Laws 1988, c. 292, § 19, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 10, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 20, eff. July 1, 1991; Laws 1991, c. 326, § 10, eff. July 1, 1991.

Administrative Law and Procedure §410, 417.

**§ 308.1. Adoption of rule upon approval by Legislature and Governor—Submission for publication**

A. Upon the approval by the Legislature and the Governor, or upon approval by joint resolution of the Legislature pursuant to subsection F of Section 308 of this title, a rule shall be considered finally adopted. The agency shall submit such finally adopted rule to the Secretary for filing and publishing such rule pursuant to Sections 251 and 255 of this title.

B. The text of the rule submitted for publication shall be the same as the text of the rule considered by the Legislature and the Governor.

Laws 1987, c. 207, § 22; Laws 1988, c. 292, § 20, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 11, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 21, eff. July 1, 1991.

**§ 308.2. Validity of rules complying with act**

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.<sup>1</sup>

B. A proceeding to contest any promulgated rule on the ground of noncompliance with the procedural requirements of Article I of the Administrative Procedures Act<sup>2</sup> must be commenced within two (2) years from the effective date of the promulgated rule.

C. 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.

Laws 1987, c. 207, § 23; Laws 1991, c. 326, § 11, eff. July 1, 1991.

<sup>1</sup> Sections 250 et seq. and 301 et seq. of this title.

<sup>2</sup> Section 250.1 et seq. of this title.

ARTICLE II

**§ 309. Individual proceedings—Notice—Hearing**

(a) In an individual proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved;

(4) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(c) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(d) Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default.

(e) The record in an individual proceeding shall include:

- (1) all pleadings, motions and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings thereon;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the officer presiding at the hearing;
- (7) all staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

(f) Oral proceedings or any part thereof shall be transcribed on request of any party.

(g) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

Laws 1963, c. 371, § 9.

Administrative Law and Procedure §452, 469.

#### Construction and application

Independent School Dist. No. 1 of Tulsa County v. Albus, Okl., 572 P.2d 554 (1977); Corporation Commission v. Oklahoma State Personnel Bd., Okl., 513 P.2d 116 (1973).

#### Exhaustion of administrative remedies

Mattoon v. City of Norman, Okl., 617 P.2d 1347 (1980) appeal after remand 633 P.2d 735 (1981); Hughes v. City of Woodward, Okl., 457 P.2d 787 (1969).

#### Necessity of notice

Ray v. Thompson, Okl., 458 P.2d 300 (1969).

### § 310. Procedures before agency

In individual proceedings:

(1) Agencies may admit and give probative effect to evidence which possesses probative value com-

monly accepted by reasonably prudent men in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law in respect to: self-incrimination; confidential communications between husband and wife during the subsistence of the marriage relation; communication between attorney and client, made in that relation; confessions made to a clergyman or priest in his professional capacity in the course of discipline enjoined by the church to which he belongs; communications made by a patient to a licensed practitioner of one of the healing arts with reference to any physical or supposed physical disease or of knowledge gained by such practitioner through a physical examination of a patient made in a professional capacity; records and files of any official or agency of any state or of the United States which, by any statute of such state or of the United States are made confidential and privileged. No greater exclusionary effect shall be given any such rule or privilege than would obtain in an action in court. Agencies may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;

(3) A party may conduct cross-examinations required for a full and true disclosure of the facts;

(4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(5) Any party shall at all times have the right to counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that such counsel shall have the right to appear and act for and on behalf of the party he represents.

Laws 1963, c. 371, § 10.

Administrative Law and Procedure §446.

#### Validity

Ray v. Thompson, Okl., 458 P.2d 300 (1969).

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**Right to remain silent**

Lee v. State ex rel. Oklahoma Real Estate Commission, Okl., 516 P.2d 1342 (1973).

**Specialized knowledge of agency**

Sebring v. Caporal, Okl., 452 P.2d 777 (1969).

**§ 311. Proposed orders**

When in an individual proceeding a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposed order is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposed order shall be accompanied by a statement of the reasons therefor and of each issue of fact or law necessary to the proposed order, prepared by the person who conducted the hearing or by one who has read the record. The parties by written stipulation may waive compliance with this section.

Laws 1963, c. 371, § 11.

Administrative Law and Procedure ⇐503.

**Construction and application**

The purpose of this section, is to preclude "signing on the dotted line" by agency officials and to ascertain that persons responsible for decision have mastered the record. Either by hearing evidence, reading the record, or at very least receiving briefs and hearing oral argument. Tulsa Classroom Teachers Ass'n, Inc. v. State Bd. of Equalization, Okl., 601 P.2d 99 (1979).

**§ 312. Final orders—Contents—Notification**

A final order adverse to a party in an individual proceeding shall be in writing or stated in the record. A final order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the order shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any order. Upon request, a copy of the order shall be delivered or mailed forthwith to each party and to his attorney of record.

Laws 1963, c. 371, § 12.

Administrative Law and Procedure ⇐489, 503.

**Validity**

Ray v. Thompson, Okl., 458 P.2d 300 (1969).

**Construction and application**

Stillwater Sav. and Loan Ass'n v. Oklahoma Sav. and Loan Bd., Okl., 534 P.2d 9 (1975).

**Failure to make findings**

Brown v. Banking Bd., Okl., 512 P.2d 166 (1973) appeal after remand 579 P.2d 1267.

**Findings of fact**

Allied Inv. Co. v. Oklahoma Securities Comm., Okl., 451 P.2d 952 (1969); State ex rel. Oklahoma St. Bd. of Embalmers and Funeral Directors v. Guardian Funeral Home, Okl., 429 P.2d 732 (1967);

Oklahoma Inspection Bureau v. State Bd. for Property and Cas. Rates, Okl., 406 P.2d 453, 458 (1965).

**Written orders**

Roussel v. State ex rel. Grimes, Okl., 614 P.2d 53 (1980).

**§ 313. Agency members not to communicate**

Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an individual proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An agency member (1) may communicate with other members of the agency, and (2) may have the aid and advice of one or more personal assistants.

Laws 1963, c. 371, § 13.

Administrative Law and Procedure ⇐443.

**§ 314. Grant, denial or renewal of licenses**

(a) When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Act concerning individual proceedings apply.

(b) When a licensee has made timely and sufficient application for renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

Laws 1963, c. 371, § 14.

Licenses ⇐22.

**Construction and application**

Gaddy v. Oklahoma State Bd. of Osteopathy, Okl., 554 P.2d 1375 (1976).

**§ 315. Furnishing of information, attendance of witnesses and production of books, records, etc.—Subpoenas**

(1) The agency conducting any proceeding subject to this Act shall have power to require the furnish-

ing of such information, the attendance of such witnesses, and the production of such books, records, papers or other objects as may be necessary and proper for the purposes of the proceeding. The agency, or any party to a proceeding before it, may take the depositions of witnesses, within or without the State, in the same manner as is provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible in any proceeding affected by this Act. Provided, however, all or any part of the deposition may be objected to at time of hearing, and may be received in evidence or excluded from the evidence by the agency or individual conducting the hearing in accordance with the law with reference to evidence in this Act or with reference to evidence in courts of record under the law of the State of Oklahoma.

(2) In furtherance of the powers granted by subsection (1) hereof, any agency, or any duly authorized member or employee thereof, upon its own motion may, and upon the request of any party appearing in an individual proceeding shall, issue subpoenas for witnesses, or subpoenas duces tecum to compel the production of books, records, papers or other objects, which may be served by the marshal of the agency or by any person in any manner prescribed for the service of a subpoena in a civil action.

(3) In case of disobedience to any subpoena issued and served under this Section or to any lawful agency requirement for information, or of the refusal of any person to testify to any matter regarding which he may be interrogated lawfully in a proceeding before an agency, the agency may apply to the district or superior court of the county of such person's residence or to any judge thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Forthwith the court or the judge shall cite the respondent to appear and shall hear the matter as expeditiously as possible. If, the disobedience or refusal is found to be unlawful, the court, or the judge, shall enter an order requiring compliance. Disobedience of such an order shall be punished as contempt of court in the same manner and by the same procedure as is provided for like conduct committed in the course of judicial proceedings.

(4) Nothing in this Section shall limit or abridge in any way the powers of the Corporation Commission in respect to contempt proceedings or of any other agency which may possess the authority to punish for contempt.

Laws 1963, c. 371, § 15.

Administrative Law and Procedure ◊463 et seq.

#### Construction and application

Oklahoma Human Rights Com'n v. Wilson Certified Foods, Inc., Okl., 536 P.2d 349 (1975).

#### Objections

Brightmire v. District Court of Tulsa County, Okl.Cr., 424 P.2d 425 (1967).

#### § 315.1. Public hearings—Fees

No agency shall charge a fee to any person wishing to submit evidence, views or arguments at any public hearing authorized by the Oklahoma Administrative Procedures Act<sup>1</sup> concerning rules, regulations, licenses, permits, orders or any other proposed agency action. Nothing in this act shall be construed to prohibit the collection of any licensing or permit fees or other fees otherwise prescribed by statute.

Laws 1976, c. 60, § 1, emerg. eff. April 19, 1976.

<sup>1</sup> Section 301 et seq. of this title.

Administrative Law and Procedure ◊512.

#### § 316. Disqualification of hearing examiner or agency member

A hearing examiner or agency member shall withdraw from any individual proceeding in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of a hearing examiner or agency member, on the ground of his inability to give a fair and impartial hearing, by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the agency, or, if it affects a member or members of the agency, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a hearing examiner, the agency shall assign another in his stead or shall conduct the hearing itself. Upon the disqualification of a member of an agency, the Governor immediately shall appoint a member pro tem to sit in place of the disqualified member in that proceeding. In further action, after the disqualification of a member of an agency, the provisions of Section 11 of this Act<sup>1</sup> shall apply.

Laws 1963, c. 371, § 16.

<sup>1</sup> Section 311 of this title.

Administrative Law and Procedure ◊443.

#### § 317. Rehearing, reopening or reconsideration of agency decision

A decision in an individual proceeding shall be subject to rehearing, reopening or reconsideration by the agency, within ten (10) days from the date of its entry. The grounds for such action shall be either:

- (a) newly discovered or newly available evidence, relevant to the issues;
- (b) need for additional evidence adequately to develop the facts essential to proper decision;

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(c) probable error committed by the agency in the proceeding or in its decision such as would be ground for reversal on judicial review of the order;

(d) need for further consideration of the issues and the evidence in the public interest; or

(e) a showing that issues not previously considered ought to be examined in order properly to dispose of the matter. The order of the agency granting rehearing, reconsideration or review, or the petition of a party therefor, shall set forth the grounds which justify such action. Nothing in this Section shall prevent rehearing, reopening or reconsideration of a matter by any agency in accordance with other statutory provisions applicable to such agency, or, at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence. On reconsideration, reopening, or rehearing, the matter may be heard by the agency, or it may be referred to a hearing examiner. The hearing shall be confined to those grounds upon which the reconsideration, reopening or rehearing was ordered. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application. Laws 1963, c. 371, § 17.

Administrative Law and Procedure ¶480 et seq.

#### § 318. Judicial review

(1) Any person or party aggrieved or adversely affected by a final order in an individual proceeding, whether such order is affirmative or negative in form, is entitled to certain, speedy, adequate and complete judicial review thereof under this act, but nothing in this section shall prevent resort to other means of review, redress, relief or trial de novo, available because of constitutional provisions. Neither a motion for new trial nor an application for rehearing shall be prerequisite to secure judicial review.

(2) The judicial review prescribed by this section, as to orders rendered in individual proceedings by agencies whose orders are made subject to review, under constitutional or statutory provisions, by appellate proceedings in the Supreme Court of Oklahoma, shall be afforded by such proceedings taken in accordance with the procedure and under the conditions otherwise provided by law, but subject to the applicable provisions of Sections 319 through 324 of this title, and the rules of the Supreme Court. In all other instances, proceedings for review shall be instituted by filing a petition, in the district court of the county in which the party seeking review resides or at the option of such party where the property interest affected is situated, within thirty (30) days after the appellant is notified of the order as provided in Section 312 of this title. Copies of the petition shall be served upon the agency and all other parties of record, and proof of such service

shall be filed in the court within ten (10) days after the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

Laws 1963, c. 371, § 18; Laws 1977, c. 114, § 2, eff. Oct. 1, 1977.

Administrative Law and Procedure ¶651 et seq.

#### Construction and application

Title 36 Okl.St. Ann. § 320 this section. *Roussel v. State ex rel. Grimes*, Okl., 614 P.2d 53 (1980).

*Citizens' Action for Safe Energy, Inc. v. Oklahoma Water Resources Bd.*, Okl.App., 598 P.2d 271 (1979); *Martin v. Harrah Independent School Dist.*, Okl., 543 P.2d 1370 (1975).

#### Remand

*Oklahoma Inspection Bureau v. State Bd. for Property and Cas. Rates*, Okl., 406 P.2d 453 (1965).

#### Trial de novo

*Baggett v. Webb*, Okl., 557 P.2d 433 (1976).

Licenses does not have right to trial de novo on appeal to district court from revocation hearing before Alcoholic Beverage Control Board. *Robbins v. Oklahoma Alcoholic Beverage Control Bd.*, Okl., 461 P.2d 610 (1969).

#### § 319. Staying enforcement of agency decision pending review

(1) The filing of a proceeding for review shall not stay enforcement of the agency decision; but the agency may do so, or the reviewing court may order a stay upon such terms as it deems proper, and shall do so whenever required by subsection (2) of this section.

(2) In every proceeding in any court for the review of an order of an agency, upon the filing of an application, supported by verified statements of material fact establishing that the enforcement of the order pending final decision would result in present, continuous and irreparable impairment of the constitutional rights of the applicant, a stay of the enforcement of such order and of the accrual of penalties thereunder shall be entered upon the condition that:

(a) injury to adverse parties or to the public, as the case may be, can be obviated through the furnishing of security adequate to compensate for any loss which may be suffered as a result of the stay in the event the order is affirmed, in whole or in part;

(b) a supersedeas bond, in the amount and with sureties prescribed and approved by the reviewing court, in its sound judicial discretion, as adequate to meet requirement (a), be filed with such court. If an application for supersedeas hereunder, accompanied by a proposal for a supersedeas bond, is not acted upon by the court within forty-five (45) days from the filing thereof, the order appealed from thereupon shall be automatically superseded and stayed, during the pendency of the appeal, upon the filing of the bond proposed in the application, provided, however, that the court thereafter may reasonably modify the terms of the supersedeas as to amount and surety whereupon the appellant shall

comply with such modification in order to maintain the supersedeas in effect.

Laws 1963, c. 371, § 19.

Administrative Law and Procedure Ⓒ674.

**§ 320. Transmission of record to reviewing court—Stipulations**

Within thirty (30) days after service of the petition for review or equivalent process upon it, or within such further time as the reviewing court, upon application for good cause shown, may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs resulting therefrom. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

Laws 1963, c. 371, § 20.

Administrative Law and Procedure Ⓒ676.

**§ 321. Review without jury—Additional testimony**

The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

Laws 1963, c. 371, § 21.

**Trial de novo not required**

Frank v. Oklahoma Real Estate Commission, Okl., 512 P.2d 190 (1973).

**§ 322. Setting aside, modifying or reversing of orders—Remand—Affirmance**

(1) In any proceeding for the review of an agency order, the Supreme Court or the District or Superior Court, as the case may be, in the exercise of proper judicial discretion or authority, may set aside or modify the order, or reverse it and remand it to the agency for further proceedings, if it determines that the substantial rights of the appellant or petitioner for review have been prejudiced because the agency findings, inferences, conclusions or decisions, are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) clearly erroneous in view of the reliable, material, probative and substantial competent evidence, as defined in Section 10 of this Act,<sup>1</sup> including matters properly noticed by the agency upon examination and consideration of the entire record as

submitted; but without otherwise substituting its judgment as to the weight of the evidence for that of the agency on question of fact; or

(f) arbitrary or capricious; or

(g) because findings of fact, upon issues essential to the decision were not made although requested.

(2) The reviewing court, also in the exercise of proper judicial discretion or authority, may remand the case to the agency for the taking and consideration of further evidence, if it is deemed essential to a proper disposition of the issue.

(3) The reviewing court shall affirm the order and decision of the agency, if it is found to be valid and the proceedings are free from prejudicial error to the appellant.

Laws 1963, c. 371, § 22.

<sup>1</sup> Section 310 of this title.

**Construction and application**

Martin v. Harrah Independent School Dist., Okl., 543 P.2d 1370 (1975).

**Arbitrary and capricious act**

State ex rel. Board of Chiropractic Examiners v. Myers, Okl., 466 P.2d 640 (1970).

**Evidence**

Oklahoma Water Resources Bd. v. Central Oklahoma Master Conservancy Dist., Okl., 464 P.2d 748 (1970); Sebring v. Caporal, Okl., 452 P.2d 777 (1969).

**Full and fair hearing**

State ex rel. Oklahoma State Bd. of Embalmers and Funeral Directors v. Guardian Funeral Home, Okl., 429 P.2d 732 (1967).

**Review**

Board of Examiners of Veterinary Medicine v. Mohr, Okl., 485 P.2d 235 (1971).

**§ 323. Review of final judgment of a district or superior court by appeal to Supreme Court**

An aggrieved party, or the agency, without any motion for a new trial, may secure a review of any final judgment of a district or superior court under this Act by appeal to the Supreme Court. Such appeal shall be taken in the manner and time provided by law for appeal to the Supreme Court from the district court in civil actions. An agency taking an appeal shall not be required to give bond.

Laws 1963, c. 371, § 23.

Administrative Law and Procedure Ⓒ681.

**§ 325. Repealed by Laws 1987, c. 207, § 26.**

From:

- Laws 1963, c. 371, § 25.
- Laws 1982, c. 338, § 58.
- Laws 1984, c. 242, § 6.
- Laws 1985, c. 285, § 15.
- Laws 1986, c. 144, § 6.

**§ 326. Repealed by Laws 1989, c. 154, § 2, operative July 1, 1989.**

From:

- Laws 1963, c. 371, § 26.

**§ 327. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980.**

From:

- Laws 1963, c. 371, § 27.