

US EPA ARCHIVE DOCUMENT

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An Act

ENROLLED HOUSE
BILL NO. 2447

By: Seikel of the House

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An Act relating to statutes and reports; amending 75 O.S. 1991, Sections 250.4, as amended by Section 30, Chapter 330, O.S.L. 1993, 250.6, 250.7, 251, 253, as last amended by Section 2 of Enrolled House Bill No. 2446 of the 2nd Session of the 44th Oklahoma Legislature, 256, as last amended by Section 1 of Enrolled House Bill No. 2277 of the 2nd Session of the 44th Oklahoma Legislature, 303, 303.1, and 308, as amended by Section 6, Chapter 310, O.S.L. 1992 and 309, as amended by Section 8, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1993, Sections 250.4, 308 and 309), which relate to the Administrative Procedures Act; modifying certain agency compliance exemptions; requiring certain publication requirements; authorizing certain deletions; adding certain authority; modifying certain procedures; providing certain reviews for formatting; modifying certain requirements for submissions for emergency rules; removing certain submission for publication requirements; requiring certain editing authority; making codification index tables and other aids to publication of rules property of state; modifying certain procedures; requiring certain use of rules and code; requiring certain report; modifying certain publication requirements; requiring additional information; providing for certain withdrawals and resubmissions; modifying contents of certain reports; adding certain legislative, procedures and authority; providing for emergency actions; providing for certain requests for reviews; authorizing certain executive sessions; amending 25 O.S. 1991, Section 307, as last amended by Section 3, Chapter 195, O.S.L. 1993 (25 O.S. Supp. 1993, Section 307), which relates to open meetings; providing for certain executive sessions for certain individual proceedings; repealing 75 O.S. 1991, Section 256.1 and 256.2, which relate to deletion of obsolete rules and schedule of compliance; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 75 O.S. 1991, Section 250.4, as amended by Section 30, Chapter 330, O.S.L. 1993 (75 O.S. Supp. 1993, Section 250.4), is amended to read as follows:

Section 250.4 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 programming, 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, 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:

1. The Oklahoma Tax Commission;
2. ~~The Oklahoma Public Welfare Commission~~ Commission for Human Services;
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,
 - 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 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;

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

14. The Oklahoma Military Department;

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

16. The University Hospitals Authority, including all hospitals or other institutions operated by the University Hospitals Authority.

SECTION 2. AMENDATORY 75 O.S. 1991, Section 250.6, is amended to read as follows:

Section 250.6 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. Prior to approval of a preemptive rule, the Governor shall submit the preemptive rule to the Office of the Secretary of State for review of proper formatting unless the preemptive rule has been reviewed by the Office prior to agency submission to the Governor. 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~~ this title.

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~~ this title 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~~ this title.

SECTION 3. AMENDATORY 75 O.S. 1991, Section 250.7, is amended to read as follows:

Section 250.7 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~~ this title 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~~ this title 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.

SECTION 4. AMENDATORY 75 O.S. 1991, Section 251, is amended to read as follows:

Section 251. 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. 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 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+_L

- h. shall include other information, in such form and in such manner as is required by the Secretary+_L 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.

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 or require 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.

SECTION 5. AMENDATORY 75 O.S. 1991, Section 253, as last amended by Section 2 of Enrolled House Bill No. 2446 of the 2nd Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 253. 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;
2. Include an impact statement ~~similar in scope and in kind to that required by which meets the requirements contained in Section 303 of this title unless such impact statement is, with the consent of the Governor, waived specifically by the agency 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 promulgating an emergency rule;~~
3. Be transmitted to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Senate, including the information required by this subsection within ten (10) days after the rule is adopted; and

4. One copy to be transmitted on the same day that filing occurs with the Governor to the Oklahoma Advisory Committee on Intergovernmental Relations if the emergency rule would have an impact on political subdivisions as determined by the agency in the rule impact statement. The filing shall include all information supplied to the Governor regarding such emergency rule pursuant to Sections 251 and 253 of this title.

C. 1. Upon the filing of an adopted emergency rule by an agency with the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Senate, 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. ~~Within ten (10) days of the agency's receipt of the Governor's approval, a~~ A copy of the Governor's approval and the emergency rule, along with the information supplied to the Governor regarding such emergency rule pursuant to Sections 251 and 253 of this title, shall be submitted by the agency Governor to the Speaker of the House of Representatives and the President Pro Tempore of the Senate when the rulemaking agency is notified of approval.

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~~ through July 14 following 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~~ through July 14 following 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. a. Emergency rules in effect on the first day of the session shall be null and void on July 15 immediately following sine die adjournment of the Legislature unless otherwise specifically provided by the Legislature.

b. An agency shall not adopt any emergency rule, which has become null and void pursuant to subparagraph a of this paragraph, as a new emergency rule or adopt any emergency rules of similar scope or intent as the emergency rules which became null and void pursuant to subparagraph a of this paragraph.

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 and hearing 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 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.

K. Prior to approval or disapproval of an emergency rule by the Governor, an agency may withdraw from review an emergency 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 and the President Pro Tempore of the Senate. In order to be promulgated as emergency rules, any replacement rules shall be resubmitted pursuant to the provisions of this section.

SECTION 6. AMENDATORY 75 O.S. 1991, Section 256, as last amended by Section 1 of Enrolled House Bill No. 2277 of the 2nd

Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 256. 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 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 December 1, 1992, the Secretary shall have indexed and published the Oklahoma Administrative Code. To effectuate this provision, the Secretary may contract for the publishing and/or and indexing, or both of the Oklahoma Administrative Code. Any permanent rule not published in the 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 annually. 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.

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~~ July 31st 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~~ As soon as possible, after July 31st of each year, the Secretary shall assemble all rules and Executive Orders, except emergency rules, promulgated during the preceding year after the publication of the preceding Code or Code supplement 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. The codification system, indexes, tables and other aids relevant to the publication of the Oklahoma Administrative Code shall be the property of the state. No person shall attempt to copyright or publish such materials without expressed written consent of the Secretary of State.

2. After April 1, 1995, all agencies shall obtain an official copy of the relevant portions of the Oklahoma Administrative Code from the Office of Administrative Rules when used as a basis for official publication or when represented as official agency rules. The sale or resale of the Oklahoma Administrative Code or any part thereof by the Secretary of State shall be exempt from any requirement mandating acquisition of a resale number and payment of sales tax.

3. The Secretary of State shall report to the Governor, the Speaker of the House of Representatives and the President Pro Tempore

of the Senate potential advantages and disadvantages of centralizing the publication for state agencies by the office of the Secretary of State of portions of the Oklahoma Administrative Code. The report shall consider the extent to which the centralization would assist in the self-funding of the operations of the Office of Administrative Rules and associated services involved in publications pursuant to this subsection. The report required by this paragraph shall be submitted by February 1, 1995.

SECTION 7. AMENDATORY 75 O.S. 1991, Section 303, is amended to read as follows:

Section 303. 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. 3. Hold a hearing, if required, as provided by subsection C of this section;~~

~~5. 4. Consider the effect its intended action may have on the various types of business and governmental 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 governmental entity or its ability to comply or both; and~~

~~6. 5. 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~~ of 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. Each agency shall maintain a listing of persons or entities requesting such notice.

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 rule₁
- 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 rule₁
- c. a description of the classes of persons who will benefit from the proposed rule₁

- d. a description of the probable economic impact of the proposed rule upon affected classes of persons⁺, including a listing of all fee changes and, whenever possible, a separate justification for each fee change,
- 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⁺, including a projected net loss or gain in such revenues if it can be projected by the agency,
- f. a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule⁺, and
- g. the date the rule impact statement was prepared and if modified, the date modified.

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.

SECTION 8. AMENDATORY 75 O.S. 1991, Section 303.1, is amended to read as follows:

Section 303.1 A. Within ten (10) days after adoption of a permanent rule, a copy of all such new rules or amendments, 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~~ 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 ~~Title 75 of the Oklahoma Statutes~~ 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 all hearings or meetings held or sponsored by an agency for the purpose of providing the public an opportunity to comment on the rules 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~~ 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 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 this title.

SECTION 9. AMENDATORY 75 O.S. 1991, Section 308, as amended by Section 6, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1993, Section 308), is amended to read as follows:

Section 308. 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 or the date and location when the rules were adopted if the rulemaking agency is not required to hold a meeting to adopt rules;

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 all hearings or meetings held or sponsored by an agency for the purpose of providing the public an opportunity to comment on the rules 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. a. (1) 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 or an emergency rule prior to such rule having the force and effect of law.

(2) Any such proposed rule or proposed amendment to a permanent rule shall be disapproved by both houses of the Legislature prior to the termination of the legislative review period specified by this section.

(3) Any 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.

b. By adoption of a concurrent resolution, the Legislature may waive the thirty-legislative-day review period for any rule which has been transmitted as required by this section.

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 subject to regular legislative cutoff dates, shall be limited to such provisions as may be necessary for disapproval or approval of a rule, and, any such other direction or mandate regarding the rule deemed necessary by the Legislature. The resolution 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 or waiver of the thirty-legislative-day review provided by 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 disapproval or rejection of such rule by either house of the Legislature.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 314.1 of Title 75, unless there is created a duplication in numbering, reads as follows:

As authorized by or pursuant to law, if an agency finds that the public health, safety, or welfare imperatively requires emergency action, has promulgated administrative rules which provide for such action and incorporates a finding regarding the emergency in its order, emergency actions may be ordered pending the final outcome of proceedings instituted pursuant to this article.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 250.10 of Title 75, unless there is created a duplication in numbering, reads as follows:

The Governor, by Executive Order, and either house of the Legislature or both houses of the Legislature, by resolution, may request an agency to review its rules to determine whether or not the rules in question should be amended, repealed or redrafted. The agency shall respond to such requests within ninety (90) calendar days of such request.

SECTION 12. AMENDATORY 75 O.S. 1991, Section 309, as amended by Section 8, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1993, Section 309), is amended to read as follows:

Section 309. 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; and
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. Deliberations by administrative heads, hearing examiners, and other persons authorized by law may be held in executive session pursuant to paragraph 8 of subsection B of Section 307 of Title 25 of the Oklahoma Statutes.

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

~~E.~~ F. The record in an individual proceeding shall include:

1. All pleadings, motions and intermediate rulings;
2. Evidence received or considered at the individual proceeding;
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; and
7. All other evidence or data submitted to the hearing examiner or administrative head in connection with their consideration of the case provided all parties have had access to such evidence.

~~E.~~ G. Oral proceedings shall be electronically recorded. Such recordings shall be maintained for such time so as to protect the record through judicial review. Copies of the recordings shall be provided by the agency at the request of any party to the proceeding. Costs of transcription of the recordings shall be borne by the party requesting the transcription. For judicial review, electronic recordings of an individual proceeding, as certified by the agency, may be submitted to the reviewing court by the agency as part of the record of the proceedings under review without transcription unless otherwise required to be transcribed by the reviewing court. In such case, the expense of transcriptions shall be taxed and assessed against the nonprevailing party. Parties to any proceeding may have the proceedings transcribed by a court reporter at their own expense.

~~G.~~ H. Findings of fact shall be based exclusively on the evidence received and on matters officially noticed in the individual proceeding unless otherwise agreed upon by the parties on the record.

SECTION 13. AMENDATORY 25 O.S. 1991, Section 307, as last amended by Section 3, Chapter 195, O.S.L. 1993 (25 O.S. Supp. 1993, Section 307), is amended to read as follows:

Section 307. A. No public body shall hold executive sessions unless otherwise specifically provided in this section.

B. Executive sessions of public bodies will be permitted only for the purpose of:

1. Discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee;
2. Discussing negotiations concerning employees and representatives of employee groups;
3. Discussing the purchase or appraisal of real property;

4. Confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest;

5. Permitting district boards of education to hear evidence and discuss the expulsion or suspension of a student when requested by the student involved or his parent, attorney or legal guardian;

6. Discussing matters involving a specific handicapped child; or

7. Discussing any matter where disclosure of information would violate confidentiality requirements of state or federal law; or

8. Engaging in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act.

C. Notwithstanding the provisions of subsection B of this section, the following public bodies may hold executive sessions:

1. The State Banking Board, as provided for under Section 306.1 of Title 6 of the Oklahoma Statutes;

2. The Oklahoma Industrial Finance Authority, as provided for in Section 854 of Title 74 of the Oklahoma Statutes;

3. The Oklahoma Development Finance Authority, as provided for in Section 5062.6 of Title 74 of the Oklahoma Statutes;

4. The Oklahoma Center for the Advancement of Science and Technology, as provided for in Section 5060.7 of Title 74 of the Oklahoma Statutes;

5. The Oklahoma Savings and Loan Board, as provided for under subsection A of Section 381.74 of Title 18 of the Oklahoma Statutes;

6. The Oklahoma Health Research Committee for purposes of conferring on matters pertaining to research and development of products, if public disclosure of the matter discussed would interfere with the development of patents, copyrights, products, or services;

7. A review committee, as provided for in Section 855 of Title 62 of the Oklahoma Statutes; and

8. The Child Death Review Board for purposes of receiving and conferring on matters pertaining to materials declared confidential by law.

D. An executive session for the purpose of discussing the purchase or appraisal of real property shall be limited to members of the public body, the attorney for the public body, and the immediate staff of the public body. No landowner, real estate salesperson, broker, developer, or any other person who may profit directly or indirectly by a proposed transaction concerning real property which is under consideration may be present or participate in the executive session.

E. No public body may go into an executive session unless the following procedures are strictly complied with:

1. The proposed executive session is noted on the agenda as provided in Section 311 of this title;

2. The executive session is authorized by a majority vote of a quorum of the members present and the vote is a recorded vote; and

3. Except for matters considered in executive sessions of the State Banking Board and the Oklahoma Savings and Loan Board, and which are required by state or federal law to be confidential, any vote or action on any item of business considered in an executive session shall be taken in public meeting with the vote of each member publically cast and recorded.

F. A willful violation of the provisions of this section shall:

1. Subject each member of the public body to criminal sanctions as provided in Section 314 of this title; and

2. Cause the minutes and all other records of the executive session, including tape recordings, to be immediately made public.

SECTION 14. REPEALER 75 O.S. 1991, Sections 256.1 and 256.2, are hereby repealed.

SECTION 15. This act shall become effective July 1, 1994.

SECTION 16. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 19th day of May, 1994.

Speaker of the House of
Representatives

Passed the Senate the 25th day of May, 1994.

President of the Senate

*Signed June 11, 1994
Effective July 1, 1994*

OFFICE OF THE GOVERNOR

Received by the Governor this _____
day of _____, 19____,
at _____, o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma the _____ day of
_____, 19____, at _____, o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this _____
day of _____, 19____,
at _____, o'clock _____ M.

By: _____