

US EPA ARCHIVE DOCUMENT

§75-250. Short title.

A. This section and Sections 250.1 through 323 of this title shall be known and may be cited as the "Administrative Procedures Act".

B. All statutes hereinafter enacted and codified as part of the Administrative Procedures Act shall be considered and deemed part of the Administrative Procedures Act.

[1]Added by Laws 1987, c. 207, § 1. Amended by Laws 1989, c. 360, § 1, emerg. eff. June 3, 1989; Laws 1997, c. 206, § 2, eff. Nov. 1, 1997.

[2]

§75-250.1. Composition of act.

A. The Administrative Procedures Act shall be composed of two Articles. Sections 250, 250.1, 250.3, 250.4, 250.5 and 250.8 of this title are applicable to both Articles I and II. Article I relating to agency filing and publication requirements for rules shall consist of Sections 250.2, 250.6, 250.7 and 250.9 through 308.2 of this title and Section 5 of this act. Article II relating to agency notice and hearing requirements for individual proceedings shall consist of Sections 308a through 323 of this title.

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. [3]Added by Laws 1987, c. 207, § 2. Amended by Laws 1989, c. 360, § 2, emerg. eff. June 3, 1989; Laws 1997, c. 206, § 3, eff. Nov. 1, 1997.

[4]

§75-250.2. 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.

6. The right to disapprove a permanent or emergency rule at any time if the Legislature determines such rule to be an imminent harm to the health, safety or welfare of the public or the state or if the Legislature determines that a rule is not consistent with legislative intent.

[5]Added by Laws 1987, c. 207, § 3. Amended by Laws 1991, c. 326, § 1, eff. July 1, 1991; Laws 1992, c. 310, § 1, eff. July 1, 1992.

[6]

§75-250.3. Definitions.

As used in the Administrative Procedures Act:

1. "Administrative head" means an official or agency body responsible pursuant to law for issuing final agency orders;

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

3. "Agency" includes but is not limited to any constitutionally or statutorily created state board, bureau, commission, office, 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;

4. "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 B 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;

5. "Final agency order" means an order that includes findings of fact and conclusions of law pursuant to Section 312 of this title, is dispositive of an individual proceeding unless there is a request for rehearing, reopening, or reconsideration pursuant to Section 317 of this title and which is subject to judicial review;

6. "Hearing examiner" means a person meeting the qualifications specified by Article II of the Administrative Procedures Act and who has been duly appointed by an agency to hold hearings and, as required, render orders or proposed orders;

7. "Individual proceeding" means the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature;

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

9. "Office" means the Office of the Secretary of State;

10. "Order" means all or part of a formal or official decision made by an agency including but not limited to final agency orders;

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

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

13. "Political subdivision" means a county, city, incorporated town or school district within this state;

14. "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;

15. "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 "rule" 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. For purposes of this

subparagraph, the term "rates" shall not include fees or charges fixed by an agency for services provided by that agency including but not limited to fees charged for licensing, permitting, inspections or publications,

- 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,
- e. orders by an agency, or
- f. press releases or "agency news releases", provided such releases are not for the purpose of interpreting, implementing or prescribing law or agency policy;

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

17. "Secretary" means the Secretary of State.

[7]Added by Laws 1983, c. 327, § 2. Amended by Laws 1985, c. 196, § 11, operative July 1, 1985; Laws 1987, c. 207, § 11. Renumbered from § 301 of this title by Laws 1987, c. 207, § 27. Amended by 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; Laws 1992, c. 310, § 2, eff. July 1, 1992; Laws 1994, c. 182, § 1, eff. July 1, 1994; Laws 1997, c. 206, § 4, eff. Nov. 1, 1997; Laws 1998, c. 239, § 1, eff. Nov. 1, 1998.

[8]

§75-250.4. Compliance with 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.

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 E 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, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Office of Homeland Security and the Board of Trustees of the Oklahoma College Savings Plan shall be exempt from Article I of the Administrative Procedures Act.

5. The Transportation Commission and the 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



6. The Midwestern Oklahoma Development Authority;
7. The Grand River Dam Authority;
8. The Northeast Oklahoma Public Facilities Authority;
9. The Council on Judicial Complaints;
10. The Board of Trustees of the Oklahoma College Savings Plan;
11. 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;
12. 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, Section 1 et seq. of Title 21 of the Oklahoma Statutes, or
  - c. willful destruction of or willful damage to state property;
13. 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, or
  - f. any filing of false information;
14. The Commissioner of Public Safety only with respect to driver license hearings and hearings conducted pursuant to the provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;
15. 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;
16. Hearings conducted by a public agency pursuant to Section 962 of Title 47 of the Oklahoma Statutes;
17. The Oklahoma Military Department;
18. The University Hospitals Authority, including all hospitals or other institutions operated by the University Hospitals Authority;
19. The Oklahoma Health Care Authority Board and the Administrator of the Oklahoma Health Care Authority;
20. The position audit procedure, including the impartial review process, of the Office of Personnel Management pursuant to Section 840-4.3 of Title 74 of the Oklahoma Statutes.

Provided, that any appeal from an impartial review determination to a court of competent jurisdiction shall be confined to the record in accordance with the provisions of Article II of the Administrative Procedures Act; and

21. The Oklahoma Office of Homeland Security.

[9]Added by Laws 1987, c. 207, § 12. Amended by Laws 1987, c. 236, § 125, 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; Laws 1993, c. 330, § 30, eff. July 1, 1993; Laws 1994, c. 384, § 1, eff. July 1, 1994; Laws 1995, c. 330, § 4, emerg. eff. June 8, 1995; Laws 1996, c. 320, § 11, emerg. eff. June 12, 1996; Laws 1997, c. 206, § 5, eff. Nov. 1, 1997; Laws 1998, c. 239, § 2, eff. Nov. 1, 1998; Laws 1999, c. 1, § 42, emerg. eff. Feb. 24, 1999; Laws 1999, c. 423, § 11, emerg. eff. June 10, 1999; Laws 2000, c. 6, § 30, emerg. eff. March 20, 2000; Laws 2001, c. 131, § 16, eff. July 1, 2001; Laws 2002, c. 402, § 12, eff. July 1, 2002; Laws 2003, c. 279, § 13, emerg. eff. May 26, 2003; Laws 2004, c. 157, § 6, emerg. eff. April 26, 2004.

NOTE: Laws 1987, c. 231, § 5 repealed by Laws 1987, c. 236, § 203, emerg. eff. July 20, 1987. Laws 1998, c. 203, § 10 repealed by Laws 1999, c. 1, § 45, emerg. eff. Feb. 24, 1999. Laws 1999, c. 142, § 4 repealed by Laws 2000, c. 6, § 33, emerg. eff. March 20, 2000.

[10]

§75-250.4a. Certain rules to be available for public inspection - Deletion of obsolete rules and internal policy statements - Private rights and procedures not affected.

A. Any agency exempt from all or part of the Administrative Procedures Act pursuant to subsection A of Section 250.4 of Title 75 of the Oklahoma Statutes shall maintain and make available for public inspection its exempt rules at its principal place of business.

B. It is recognized by the Oklahoma Legislature that agencies specified by subsection A of this section have published rules containing obsolete rules or internal policy statements or agency statements which do not meet the Administrative Procedures Act definition of rules. Therefore, by December 31, 1998, each such 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 shall be deleted by the agency. 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.

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.

[11]Added by Laws 1997, c. 206, § 6, eff. Nov. 1, 1997.

[12]

§75-250.5. Act not to apply to certain governments, authorities, etc.

This act 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.

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

[14]

§75-250.6. Commission for Human Services - Preemptive rules - Approval by Governor - Filing of approval 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.

2. A preemptive rule must be approved by the Governor pursuant to this section.

3. 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 the Department of Human Services shall request the Governor to approve the rules on the basis 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 approval of a preemptive rule, the Governor shall review such rule and decide as to whether such rule should be approved. 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 approve such rule within twenty-eight (28) calendar days shall constitute denial of the rule as a preemptive rule.

3. Upon approval of a preemptive rule, the Governor shall immediately notify the Commission. Upon receipt of notice of the approval of the preemptive rule, the Commission shall file the number of copies specified by the Secretary of the approval 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 this title.

4. The preemptive rule shall be published in accordance with the provisions of Section 255 of this title in "The Oklahoma Register" following approval by the Governor. The Governor's approval and the approved rules shall be retained as official records by the Office of Administrative Rules.

5. For informational purposes only, a copy of the Governor's approval 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 approval of the preemptive rule by the Governor.

6. Upon approval by the Governor, the rule shall be considered promulgated and shall be in force immediately, or if 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. Except as otherwise provided by this section, preemptive rules shall be promulgated and published in compliance with Article I of the Administrative Procedures Act. Preemptive rules promulgated pursuant to the provisions of this section shall be exempt from the provisions of Sections 253, 303, 303.1, 303.2, 304, 308 and 308.1 of this title.

[15]Added by Laws 1988, c. 266, § 25, operative July 1, 1988. Amended by Laws 1990, c. 300, § 3, eff. July 1, 1991; Laws 1991, c. 326, § 2, eff. July 1, 1991; Laws 1994, c. 384, § 2, eff. July 1, 1994; Laws 1997, c. 206, § 8, eff. Nov. 1, 1997; Laws 1998, c. 239, § 3, eff. Nov. 1, 1998.

[16]

§75-250.7. 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 this title and rules published in "The Oklahoma Register", the rules published in "The Oklahoma Register" pursuant to Section 255 of 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 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.

[17]Added by Laws 1988, c. 292, § 3, emerg. eff. July 1, 1988. Amended by Laws 1990, c. 300, § 4, eff. July 1, 1991; Laws 1991, c. 326, § 3, eff. July 1, 1991; Laws 1994, c. 384, § 3, eff. July 1, 1994; Laws 1997, c. 206, § 9, eff. Nov. 1, 1997.

[18]

§75-250.8. Time computations.

In computing any period of time prescribed or allowed by the Administrative Procedures Act, 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.; provided, permanent rules shall become effective on the

tenth day after the rules are published in "The Oklahoma Register", as set forth in subsection B of Section 304 of this title, regardless of the day of the week.

[19]Laws 1989, c. 360, § 4, emerg. eff. June 3, 1989. Amended by Laws 2004, c. 183, § 1, emerg. eff. May 3, 2004.

[20]

§75-250.9. 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.

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.

[21]Added by Laws 1990, c. 300, § 5, eff. July 1, 1991. Amended by Laws 1991, c. 326, § 4, eff. July 1, 1991; Laws 1997, c. 206, § 10, eff. Nov. 1, 1997.

[22]

§75-250.10. Request for agency review of rules.

The Governor by Executive Order or either house of the Legislature or both houses of the Legislature by resolution, or a small business or the Small Business Regulatory Review Committee pursuant to Section 5 of this act, 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 requests from the Governor or the Legislature within ninety (90) calendar days of such request.

[23]Added by Laws 1994, c. 384, § 11, eff. July 1, 1994. Amended by Laws 2002, c. 495, § 7, eff. July 1, 2002.

[24]

§75-251. 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. 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,
  - 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 "The Oklahoma 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.

[25]Added by Laws 1961, p. 602, § 1. Amended by 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; Laws 1994, c. 384, § 4, eff. July 1, 1994; Laws 1997, c. 206, § 11, eff. Nov. 1,

1997; Laws 1998, c. 239, § 4, eff. Nov. 1, 1998.

[26]

§75-252. 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.

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.

[27]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.

[28]

§75-253. Emergency rules.

A. If an agency finds that an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest 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 which meets the requirements contained in Section 303 of this title unless such impact statement is, with the prior written 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 or contrary to the public interest in the process of promulgating an emergency rule. In addition, the impact statement shall provide information on any cost impacts of the rule received by the agency from any private or public entities;

3. Be transmitted in duplicate 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 this section and Section 251 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. An emergency rule shall only be applied prospectively from its effective date.

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. Upon disapproval of an emergency rule, the Governor shall notify within fifteen (15) days, in writing, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Office of Administrative Rules.

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

2. A copy of the Governor's approval shall be submitted by the Governor to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Office of Administrative Rules when the rulemaking agency is notified of approval.

3. The emergency rule shall be published in accordance with the provisions of Section 255 of this title in "The Oklahoma Register" following the approval by the Governor. The Governor's approval and the approved rules shall be retained as official records by the Office of Administrative Rules.

F. Emergency rules shall be effective from the date of approval 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 through July 14 following such session unless it is made ineffective pursuant to subsection H of this section.

G. No agency shall adopt any emergency rule which establishes or increases fees, except during such times as the Legislature is in session, unless specifically mandated by the Legislature or federal legislation, or when the failure to establish or increase fees would conflict with an order issued by a court of law.

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. If an emergency rule is superseded by another emergency rule prior to the enactment of a permanent rule, the latter emergency rule shall retain the same expiration date as the superseded emergency rule, unless otherwise authorized by the Legislature.

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

- a. disapproved by the Legislature,
  - b. superseded 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. Unless otherwise authorized by the Legislature, by concurrent resolution or by law, 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 Section 303.1 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 Section 303.1 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, the President Pro Tempore of the Senate and the Office of Administrative Rules. In order to be promulgated as emergency rules, any replacement rules shall be resubmitted pursuant to the provisions of this section.

[29]Added by Laws 1961, p. 603, § 3. Amended by 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; Laws 1992, c. 310, § 3, emerg. eff. May 27, 1992; Laws 1994, c. 182, § 2, eff. July 1, 1994; Laws 1994, c. 384, § 5, eff. July 1, 1994; Laws 1996, c. 225, § 1, eff. Nov. 1, 1996; Laws 1997, c. 206, § 12, eff. Nov. 1, 1997; Laws 1998, c. 239, § 5, eff. Nov. 1, 1998; Laws 1999, c. 211, § 1, eff. Nov. 1, 1999.

[30]

§75-254. Attestation of rules - Proof 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.

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 send proof of publication to the agency submitting the rules for publication. The agency submitting the rules shall make such rules available to the public in accordance with the Open Records Act.

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

[31]Added by Laws 1961, p. 603, § 4. Amended by Laws 1987, c. 207, § 7; Laws 1988, c. 292, § 8, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 9, eff. July 1, 1991; Laws 1998, c. 239, § 6, eff. Nov. 1, 1998.

[32]

§75-255. Publication of The Oklahoma Register - Publication of rules and regulations.

A. 1. 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, 303.2 and 308 of this title after the date of acceptance by the Secretary.

2. The Secretary shall cause a copy of each publication of "The Oklahoma Register" to be sent to those county clerks who request it, to members of the Legislature upon request, and to such other agencies, libraries, and officials as the Secretary may select. The Secretary may charge recipients of the publication a cost sufficient to defray the cost of publication and mailing.

3. 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.

4. 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.

[33]Added by Laws 1961, p. 603, § 5. Amended by 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; Laws 1996, c. 35, § 1, eff. Nov. 1, 1996; Laws 1997, c. 206, § 13, eff. Nov. 1, 1997; Laws 1998, c. 239, § 7, eff. Nov. 1, 1998.

[34]

§75-256. 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" 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, 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 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 Oklahoma Register" 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 August 15 of each year shall be published in the next succeeding "Code" or supplement thereto.

2. As soon as possible after August 15 of each year, the Secretary shall assemble all rules and Executive Orders, except emergency rules, promulgated 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. 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 "Oklahoma 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 the "Oklahoma 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. The Secretary may publish or authorize the publication of the "Code" in part.

D. The Secretary is authorized to correct spelling errors in rules submitted for publication in the "Code" or any such supplements or in "The Oklahoma Register". 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, derivations, cross references, notes of decisions, source notes, authority notes, numerical lists, and codification guides, other than the actual text of rules, indexes, tables and other aids relevant to the publication of the "Oklahoma Administrative Code" and "The Oklahoma Register" shall be the property of the state and may be reproduced only with the written consent of the Secretary. The information which appears on the same page with the text of a rule may be reproduced incidentally with the reproduction of the rule, if the reproduction is for the private use of the individual and not for resale. No person shall attempt to copyright or publish the "Oklahoma Administrative Code" or "The Oklahoma Register", in printed or electronic media, without expressed written consent of the Secretary of State. The Secretary shall notify the Speaker of the House of Representatives and the President Pro Tempore of the Senate of any requests to copyright or publish the "Oklahoma Administrative Code" or "The Oklahoma Register", prior to consent by the Secretary.

2. The Secretary may provide for the electronic access to the "Oklahoma Administrative Code" and "The Oklahoma Register" by:

- a. subscription, or
  - b. an exclusive or a nonexclusive contract for public and private access.
3. Publications of rules by agencies are not official publications.
  4. 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.

[35]Added by Laws 1961, p. 604, § 6. Amended by 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; Laws 1992, c. 310, § 4, eff. July 1, 1992; Laws 1994, c. 100, § 1, eff. Sept. 1, 1994; Laws 1994, c. 384, § 6, eff. July 1, 1994; Laws 1997, c. 206, § 14, eff. Nov. 1, 1997; Laws 1998, c. 239, § 8, eff. Nov. 1, 1998.

[36]

§75-256.1. Repealed by Laws 1994, c. 384, § 14, eff. July 1, 1994.

§75-256.2. Repealed by Laws 1994, c. 384, § 14, eff. July 1, 1994.

§75-256.3. Fees for copying, reproducing or certifying records.

The Office of Administrative Rules shall charge the public for the costs of copying, reproducing or certifying records of the Office of Administrative Rules pursuant to Section 24A.5 of Title 51 of the Oklahoma Statutes.

[37]Added by Laws 1992, c. 310, § 5, eff. July 1, 1992.

[38]

§75-257. 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.

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.

[39]Added by Laws 1987, c. 207, § 10. Amended by Laws 1990, c. 300, § 14, eff. July 1, 1991.

[40]

§75-257.1. 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.

[41]Added by Laws 1988, c. 292, § 13, emerg. eff. July 1, 1988. Amended by Laws 1990, c. 300, § 15, eff. July 1, 1991; Laws 1991, c. 326, § 8, eff. July 1, 1991; Laws 1997, c. 206, § 15, eff. Nov. 1, 1997.

[42]

§75-301. Renumbered as § 250.3 by Laws 1987, c. 207, § 27.

§75-302. 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 all final orders, decisions and opinions.

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

2. The agency rulemaking record shall contain:

- a. copies of all publications in "The Oklahoma Register" with respect to the rule or the proceeding upon which the rule is based,
- b. copies of any portions of the agency's public rulemaking docket containing entries relating to the rule or the proceeding upon which the rule is based,
- c. all written petitions, requests, submissions, and comments received by the agency and all other written materials considered by the agency in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based,
- d. any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations,
- e. a copy of any regulatory analysis prepared for the proceeding upon which the rule is based,
- 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. 1. By December 31, 2002, each agency that issues precedent-setting orders shall maintain and index all such orders that the agency intends to rely upon as precedent. The index and the orders shall be available for public inspection and copying in the main office and each regional or district office of the agency. The orders shall be indexed by subject.

2. After December 31, 2002, an order shall not be relied upon as precedent by an agency to the detriment of any person until it has been made available for public inspection and indexed in the manner described in this subsection.

3. An agency shall consistently apply rules to each person subject to the jurisdiction of the agency regarding issuance of orders.

D. An agency shall not by internal policy, memorandum, or other form of action not otherwise authorized by the Administrative Procedures Act:

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.

E. Any agency memorandum, internal policy, or other form of action violative of this section or the spirit thereof is null, void, and unenforceable.

F. 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.

[43]Added by Laws 1963, c. 371, § 2. Amended by Laws 1987, c. 207, § 13; Laws 1988, c. 292, § 14, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 16, eff. July 1, 1991; Laws 1997, c. 206, § 16, eff. Nov. 1, 1997; Laws 1998, c. 239, § 9, eff. Nov. 1, 1998.

[44]

§75-303. Adoption, amendment or revocation of rule - Procedure.

A. Prior to the adoption of any rule or amendment or revocation 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. For at least thirty (30) 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;

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

4. Consider the effect its intended action may have on the various types of business and governmental entities. Except where such modification or variance is prohibited by statute or constitutional constraints, 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. For business entities, the agency

shall include a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, and use quantifiable data to the extent possible, taking into account both short-term and long-term consequences; and

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. If the agency determines that the rule affects business entities, a request that such entities provide the agency, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule;

7. 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;

8. 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;

9. 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

10. 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 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 and the rule impact statement, if available, to be mailed to all persons who have made a timely request of the agency for advance notice of its rulemaking proceedings. Provided, in lieu of mailing copies, an agency may electronically notify interested persons that a copy of the proposed rule and the rule impact statement, if available, may be viewed on the agency's web site. If an agency posts a copy of the proposed rule and rule impact statement on its web site, the agency shall not charge persons for the cost of downloading or printing the proposed rule or impact statement. 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 thirty (30) 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,
- d. an association having not less than twenty-five members, or
- e. the Small Business Regulatory Review Committee.

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 thirty (30) 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 thirty (30) 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, and any information on cost impacts received by the agency from any private or public entities,
- 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 or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change,
- e. the probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for 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 implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule,
- g. a determination of whether implementation of the proposed rule may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act,
- h. an explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule,
- i. a determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk,

- j. a determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented, and
- k. 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 or contrary to the public interest in the process of adopting a particular rule, the agency may request the Governor to waive such requirement. Upon request by an agency, the Governor may also waive the rule impact statement requirements if the agency is required to implement a statute or federal requirement that does not require an agency to interpret or describe the requirements, such as federally mandated provisions which afford the agency no discretion to consider less restrictive alternatives. If the Governor fails to waive such requirement, in writing, 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.

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.

[45]Added by Laws 1963, c. 371, § 3. Amended by 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; Laws 1994, c. 384, § 7, eff. July 1, 1994; Laws 1995, c. 1, § 38, emerg. eff. March 2, 1995; Laws 1996, c. 225, § 2, eff. Nov. 1, 1996; Laws 1997, c. 206, § 17, eff. Nov. 1, 1997; Laws 1998, c. 239, § 10, eff. Nov. 1, 1998; Laws 1999, c. 211, § 2, eff. Nov. 1, 1999; Laws 2002, c. 495, § 8, eff. July 1, 2002; Laws 2003, c. 75, § 3, eff. July 1, 2003; Laws 2003, c. 317, § 1, emerg. eff. May 28, 2003.

NOTE: Laws 1994, c. 182, § 3 repealed by Laws 1995, c. 1, § 40, emerg. eff. March 2, 1995. [46]

§75-303.1. Filing of rules, amendments, revisions or revocations and agency rule report with the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

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

B. If the agency determines in the rule impact statement prepared as part of the agency rule report that the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing a proposed permanent rule, a copy of the proposed rule and rule report shall be filed within ten (10) days after adoption of the permanent rule with the Oklahoma Advisory Committee on Intergovernmental Relations for its review. Said Committee may communicate any recommendations that it may deem necessary to the Governor, the Speaker of the House of Representatives and President Pro Tempore of the Senate during the period that the permanent rules are being reviewed.

C. When the rules have been submitted to the Governor, the Speaker of the House of

Representatives and the President Pro Tempore of the Senate, the agency shall also submit to the Office of Administrative Rules for publication in "The Oklahoma Register", a statement that the adopted rules have been submitted to the Governor and the Legislature.

D. The text of the adopted rules shall be submitted to the Governor, 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.

E. 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 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 written comments received prior to the adoption of the rule. The summary shall include all comments received about the cost impact of the proposed rules;

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;

13. The proposed effective date of the rules, if an effective date is required pursuant to paragraph 1 of subsection B of Section 304 of this title; and

14. Any other information requested by the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate or either rule review committee.

[47]Added by Laws 1988, c. 292, § 17, emerg. eff. July 1, 1988. Amended by Laws 1989, c. 360, § 9, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 18, eff. July 1, 1991; Laws 1994, c. 384, § 8, eff. July 1, 1994; Laws 1996, c. 225, § 3, eff. Nov. 1, 1996; Laws 1997, c. 206, § 18, eff. Nov. 1, 1997; Laws 1998, c. 239, § 11, eff. Nov. 1, 1998.

[48]

§75-303.2. Approval or disapproval by the Governor - Time limit.

A. 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. A copy of such approval shall be given by the Governor to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Upon receipt of the approval, the agency shall submit a notice of such approval to the Office of Administrative

Rules 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 Governor to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Failure of the Governor to approve a rule within the specified period shall constitute disapproval of the rule by the Governor. Upon receipt of the disapproval, or upon failure of the Governor to approve the rule within the specified period, the agency shall submit a notice of such disapproval to the Office of Administrative Rules for publication in "The Oklahoma Register". Any effective emergency rule which would have been superseded by a disapproved permanent rule, shall be deemed null and void on the date the Governor disapproves the permanent rule.

B. 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 B of Section 308 of Title 75 of the Oklahoma Statutes.

[49]Added by Laws 1998, c. 239, § 12, eff. Nov. 1, 1998.

[50]

§75-304. 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 agency rule report, or "The Oklahoma Register", the later date is the effective date. A rule shall only be applied prospectively from its 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. An emergency rule shall only be applied prospectively from its effective date.

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.

[51]Added by Laws 1963, c. 371, § 4. Amended by Laws 1987, c. 207, § 15; Laws 1988, c. 292, § 16, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 19, eff. July 1, 1991; Laws 1997, c. 206, § 19, eff. Nov. 1, 1997; Laws 1998, c. 239, § 13, eff. Nov. 1, 1998.

[52]

§75-305. 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 of a petition, the agency has not initiated rulemaking proceedings in accordance with the Administrative Procedures Act, the petition shall be deemed to have been denied.

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

[54]

§75-306. 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 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.

[55]Laws 1963, c. 371, § 6; Laws 1977, c. 114, § 1, eff. Oct. 1, 1977; Laws 1987, c. 207, § 17.  
[56]

§75-307. 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.

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

[58]

§75-307.1. 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, 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, 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.

[59]Added by Laws 1987, c. 207, § 19. Amended by Laws 1988, c. 292, § 18, emerg. eff. July 1, 1988.

[60]

§75-307.2. Repealed by Laws 1988, c. 292, § 22, emerg. eff. July 1, 1988.

§75-308. Review of proposed rules by Legislature - Approval or disapproval.

A. Upon receipt of any adopted rules, 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.

B. 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 submitted for review, or otherwise approve any rule.

2. a. (1) The Legislature may by concurrent resolution disapprove a proposed rule or a proposed amendment to a rule submitted to the Legislature 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 submitted for review.

C. Unless otherwise authorized by the Legislature by concurrent resolution, or by law, whenever a rule is disapproved as provided in subsection B 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. Any effective emergency rule which would have been superseded by a disapproved permanent rule shall be deemed null and void on the date the Legislature disapproves the permanent rule. 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".

D. 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.

E. 1. Transmission of a rule for legislative review 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 submitted pursuant to Section 303.1 of this title, 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 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 B of this section. An agency may also adopt emergency rules under the provisions of Section 253 of this title.

F. Prior to final adoption of a rule, an agency may withdraw a rule from legislative review. 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".

G. 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.

H. 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.

[61]Added by Laws 1963, c. 371, § 8. Amended by 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; Laws 1992, c. 310, § 6, eff. July 1, 1992; Laws 1994, c. 384, § 9, eff. July 1, 1994; Laws 1995, c. 1, § 39, emerg. eff. March 2, 1995; Laws 1997, c. 206, § 20, eff. Nov. 1, 1997; Laws 1998, c. 239, § 14, eff. Nov. 1, 1998.

NOTE: Laws 1994, c. 182, § 4 repealed by Laws 1995, c. 1, § 40, emerg. eff. March 2, 1995.

[62]

§75-308.1. Expiration of legislative and gubernatorial review periods - Submission of adopted rules to Department of Libraries for publication.

A. Upon the approval by the Legislature and the Governor, or upon approval by joint resolution of the Legislature pursuant to subsection B 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.

[63]Added by Laws 1987, c. 207, § 22. Amended by 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; Laws 1997, c. 206, § 21, eff. Nov. 1, 1997; Laws 1998, c. 239, § 15, eff. Nov. 1, 1998.

[64]

§75-308.2. Rules - Necessity of promulgation - Interpretations not to change - Prospective effect only - Limitation period on contest proceedings - Force of law and prima facie evidence.

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

B. A proceeding to contest any promulgated rule on the ground of noncompliance with the procedural requirements of Article I of the Administrative Procedures Act 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.

[65]Added by Laws 1987, c. 207, § 23. Amended by Laws 1991, c. 326, § 11, eff. July 1, 1991; Laws 1996, c. 225, § 4, eff. Nov. 1, 1996; Laws 1997, c. 206, § 22, eff. Nov. 1, 1997.

[66]

§75-308a. Jurisdiction.

The provisions of Article II of the Administrative Procedures Act govern the hearing procedures of agencies, and does not grant jurisdiction, not otherwise provided by law. The Legislature recognizes that agencies take actions and make decisions, other than by individual proceedings for which the right to judicial review is intended to be exercised pursuant to other laws.

[67]Added by Laws 1992, c. 310, § 7, eff. July 1, 1992.

[68]

§75-309. 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; 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.

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.

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.

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.

[69]Added by Laws 1963, c. 371, § 9. Amended by Laws 1992, c. 310, § 8, eff. July 1, 1992; Laws 1994, c. 384, § 12, eff. July 1, 1994.

[70]

§75-310. Procedures before agency.

In individual proceedings:

1. Agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons 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 or her professional capacity in the course of discipline enjoined by the church to which he or she 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 a 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 a 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 counsel shall have the right to appear and act for and on behalf of the party represented.

6. A party may request the exclusion of witnesses to the extent and for the purposes stated in Section 2615 of Title 12 of the Oklahoma Statutes. Exclusion of a witness shall not be a violation of the Oklahoma Open Meeting Act.

[71]Added by Laws 1963, c. 371, § 10. Amended by Laws 1999, c. 46, § 1, eff. Nov. 1, 1999.

[72]

§75-311. Proposed orders.

A. Except as otherwise provided by Section 311.1 of this title, if the administrative head of an agency has not heard the case or read the record of an individual proceeding, a final agency order adverse to a party shall not be made until a proposed order is served upon the party, and an opportunity is afforded to the party to file exceptions and present briefs and oral argument to the administrative head who is to render the final agency order. 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 hearing examiner or by one who has read the record.

B. Such proposed order shall be served upon the parties at least fifteen (15) days prior to a hearing or meeting at which the administrative head is to consider or render a decision on the proposed order. At such hearing or meeting, the parties shall be afforded an opportunity to present briefs and oral arguments concerning the proposed order.

C. The parties by written stipulation may waive compliance with this section.

[73]Added by Laws 1963, c. 371, § 11. Amended by Laws 1992, c. 310, § 9, eff. July 1, 1992; Laws 1995, c. 317, § 1, emerg. eff. June 5, 1995; Laws 1998, c. 239, § 16, eff. Nov. 1, 1998.

[74]

§75-311.1. Department of Health - Final agency orders - Authority.

A. The Commissioner of the State Department of Health may delegate the authority to issue a final agency order adverse to a party to an agency administrative law judge if:

1. The administrative law judge has a general knowledge of the Public Health Code, and rules promulgated thereto;

2. The administrative law judge:

a. is currently licensed to practice law by the Supreme Court of this state,

- b. has a working knowledge of the Administrative Procedures Act and administrative rules of the State Department of Health,
- c. is not an owner, stockholder, employee or officer of, nor has any other business relationship with, any corporation, partnership, or other business or entity that is subject to regulation by the State Department of Health,
- d. is separate and apart from the legal division or office of general counsel of the State Department of Health,
- e. is not responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the State Department of Health, and
- f. has not been engaged in the performance of investigative or prosecuting functions for the State Department of Health regarding the party receiving the final agency order; and

3. The Commissioner in delegating the authority to issue final agency orders adverse to a party pursuant to this section specifically designates by written agency policy and procedure the type or category of final agency order which may be issued by the administrative law judge.

B. The provisions of this section shall not be construed to authorize or allow restraints on the authority of the Commissioner to adopt, reject, review, modify or correct the findings of fact and conclusions of law or any proposed order issued by the administrative law judge.

C. When the administrative law judge issues a final agency order, that order becomes the final order of the State Department of Health without further proceeding unless there is a request for rehearing, reopening, or reconsideration pursuant to Section 317 of Title 75 of the Oklahoma Statutes or a filing for judicial review pursuant to Section 318 of Title 75 of the Oklahoma Statutes.

[75]Added by Laws 1995, c. 317, § 2, emerg. eff. June 5, 1995.

[76]

§75-312. Final agency orders - Contents - Notification.

A. A final agency order adverse to a party shall:

1. Be in writing; and
2. 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 final agency order shall include a ruling upon each proposed finding.

B. Parties shall be notified either personally or by certified mail, return receipt requested, of any final agency order. Upon request, a copy of the order shall be delivered or mailed forthwith to each party and to his attorney of record.

[77]Laws 1963, c. 371, § 12; Laws 1992, c. 310, § 10, eff. July 1, 1992.

[78]

§75-313. 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.

[79]Laws 1963, c. 371, § 13.

[80]

§75-314. Issuance or denial of new license - Revocation, suspension, annulment, withdrawal or nonrenewal of existing license.

A. Except as otherwise specifically provided by law, the issuance or denial of a new license shall not require an individual proceeding.

B. Except as otherwise prohibited by law, if a licensee has made timely and sufficient application for renewal of a license or a new license with reference to any transfer of an activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency. In case the application for renewal or for a new license with reference to any transfer of an activity of a continuing nature is denied or the terms of the new license limited, the existing license does not expire until the last day for seeking review of the final agency order or a later date fixed by order of the reviewing court.

C. 1. Unless otherwise provided by law, an existing license shall not be revoked, suspended, annulled, withdrawn or nonrenewed unless, prior to the institution of such final agency order, 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 or renewal of the license.

2. 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.

[81]Laws 1963, c. 371, § 14; Laws 1992, c. 310, § 11, eff. July 1, 1992.

[82]

§75-314.1. Implementation of emergency action pending final outcome of proceedings.

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.

[83]Added by Laws 1994, c. 384, § 10, eff. July 1, 1994.

[84]

§75-315. Furnishing of information, attendance of witnesses and production of books, records, etc. - Subpoenas.

A. 1. The agency conducting any individual proceeding shall have power to require the furnishing 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.

2. 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.

B. In furtherance of the powers granted by subsection A of this section, any agency, administrative head, hearing examiner or any other duly authorized member or employee thereof, upon its own motion may, and upon the request of any party appearing in an individual proceeding shall:

1. Issue subpoenas for witnesses;
2. Issue 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; or
3. Quash a subpoena or subpoenas duces tecum so issued; provided, prior to quashing a subpoena or subpoenas duces tecum the agency shall give notice to all parties. A subpoena or subpoenas duces tecum may not be quashed if any party objects.

C. 1. 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.

2. 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.

[85]Laws 1963, c. 371, § 15; Laws 1992, c. 310, § 12, eff. July 1, 1992.

[86]

§75-315.1. 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 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.

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

[88]

§75-316. 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 administrative head of 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 agency shall proceed with the proceeding if a quorum remains. If a quorum no longer exists, by virtue of the member's disqualification, the Governor immediately shall appoint a member pro tempore 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 311 of this title shall apply.

[89]Added by Laws 1963, c. 371, § 16. Amended by Laws 1997, c. 206, § 23, eff. Nov. 1, 1997; Laws 1998, c. 62, § 2, eff. Nov. 1, 1998.

[90]

§75-317. Rehearing, reopening or reconsideration of agency decision.

A. A final agency order issued by an administrative head of an agency shall be subject to rehearing, reopening or reconsideration by such administrative head. Any application or request for such rehearing, reopening or reconsideration shall be made by any party aggrieved by the final agency order within ten (10) days from the date of the entry of such final agency order. The grounds for such action shall be either:

1. Newly discovered or newly available evidence, relevant to the issues;
2. Need for additional evidence adequately to develop the facts essential to proper decision;
3. 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 final agency order;
4. Need for further consideration of the issues and the evidence in the public interest; or
5. A showing that issues not previously considered ought to be examined in order properly to dispose of the matter.

B. 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.

C. 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.

D. 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.

E. 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.

[91]Laws 1963, c. 371, § 17; Laws 1992, c. 310, § 13, eff. July 1, 1992.

[92]

§75-318. Judicial review.

A. 1. Any party aggrieved by a final agency order in an individual proceeding is entitled to certain, speedy, adequate and complete judicial review thereof pursuant to the provisions of this section and Sections 319, 320, 321, 322 and 323 of this title.

2. This section shall not prevent resort to other means of review, redress, relief or trial de novo, available because of constitutional provisions.

3. Neither a motion for new trial nor an application for rehearing shall be prerequisite to secure judicial review.

B. 1. The judicial review prescribed by this section for final agency orders, as to agencies whose final agency 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.

2. 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 final agency order as provided in Section 312 of this title.

C. 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.

D. In any proceedings for review brought by a party aggrieved by a final agency order:

1. The agency whose final agency order was made subject to review may be entitled to recover against such aggrieved party any court costs, witness fees and reasonable attorney fees if the court determines that the proceeding brought by the party is frivolous or was brought to delay the effect of said final agency order.

2. The party aggrieved by the final agency order may be entitled to recover against such agency any court costs, witness fees, and reasonable attorney fees if the court determines that the proceeding brought by the agency is frivolous.

[93]Laws 1963, c. 371, § 18; Laws 1977, c. 114, § 2, eff. Oct. 1, 1977; Laws 1992, c. 310, § 14, eff. July 1, 1992.

[94]

§75-319. 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.

[95]Laws 1963, c. 371, § 19. [96]

§75-320. 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. For purposes of this section, "record" shall include

such information as specified by Section 309 of this title. 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. [97]Laws 1963, c. 371, § 20; Laws 1992, c. 310, § 15, eff. July 1, 1992.

[98]

§75-321. 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.

[99]Laws 1963, c. 371, § 21.

[100]

§75-322. Setting aside, modifying or reversing of orders - Remand - Affirmance.

(1) In any proceeding for the review of an agency order, proceeding for the review of an agency order, the Supreme Court or the district 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, 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.

[101]Laws 1963, c. 371, § 22.

[102]

§75-323. 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.

[103]Laws 1963, c. 371, § 23.

