

ENROLLED HOUSE
BILL NO. 1328

By: Seikel of the House

and

Hendrick and Roberts of
the Senate

An Act relating to statutes and reports; amending 75 O.S. 1991, Sections 250.3, as amended by Section 2, Chapter 310, O.S.L. 1992, 250.4, 253, as amended by Section 3, Chapter 310, O.S.L. 1992, 256, as amended by Section 4, Chapter 310, O.S.L. 1992, 303 and 308, as amended by Section 6, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1992, Sections 250.3, 253, 256 and 308), which relate to the Administrative Procedures Act; modifying definitions; modifying certain agency compliance exemptions; modifying rule impact statement requirements; providing for waiver; modifying certain requirements for submissions for emergency rules; requiring certain approval time limitations; requiring certain revenues; providing for rule impact statements; clarifying language; extending termination of administrative task force; making codification index tables and other aids to publication of rules property of state; requiring certain use of rules and code; requiring certain report; authorizing certain extensions; requiring additional information; providing for emergency actions; providing for certain withdrawals and resubmissions; prohibiting certain actions; amending Section 18 of Article IX of the Oklahoma Constitution; providing for authorization; providing for compliance; authorizing exception; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 75 O.S. 1991, Section 250.3, as amended by Section 2, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1992, Section 250.3), is amended to read as follows:

Section 250.3 As used in the Administrative Procedures Act:

1. "Agency" ~~means~~ includes but is not limited to any constitutionally or statutorily created state board, bureau, commission, department, authority, public trust in which the state is a beneficiary, or interstate commission, except:

- a. the Legislature or any branch, committee or officer thereof, and
- b. the courts;

2. "Rule" means any agency statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the

procedure or practice requirements of the agency. The term "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 release", provided such releases are not for the purpose of interpreting, implementing or prescribing law or agency policy;

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

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

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

6. "Final agency order" means an order made pursuant to subsection D of Section 309 and Sections 311 and 312 of this title and which is subject to judicial review;

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

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

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

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

12. "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;

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

14. "Secretary" means the Secretary of State;

15. "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 proposed orders; and

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

SECTION 2. AMENDATORY 75 O.S. 1991, Section 250.4, is amended to read as follows:

Section 250.4 A. 1. Except as is otherwise specifically provided in this subsection, each agency is required to comply with Article I of the Administrative Procedures Act, Section 250.3 of this title.

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

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

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

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

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

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

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

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

8. The Commissioner of Public Safety shall be exempt from Section 253, subsections C and D of Section 303 and Sections 303.1, 307.1, 308 and 308.1 of this title insofar as it is necessary to adopt rules under the Oklahoma Hazardous Materials Transportation and Motor Carrier Act, to maintain a current incorporation of federal motor carrier safety and hazardous material regulations for

which the Commissioner has no discretion when the state is mandated to adopt rules identical to federal rules and regulations. Such rules may be adopted by the Commissioner and shall be deemed promulgated twenty (20) days after notice of adoption is published in The Oklahoma Register. Such publication need not set forth the full text of the rule but may incorporate the federal rules and regulations by reference. Provided, for any rules for which the Commissioner has discretion to allow variances, tolerances or modifications from the federal rules and regulations, the Commissioner shall fully comply with Article I of the Administrative Procedures Act.

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

1. The Oklahoma Tax Commission;
2. ~~The Oklahoma Public Welfare Commission~~ Commission for Human Services;
3. The Oklahoma Ordnance Works Authority;
4. The Oklahoma Corporation Commission;
5. The Pardon and Parole Board;
6. The Midwestern Oklahoma Development Authority;
7. The Grand River Dam Authority;
8. The supervisory or administrative agency of any penal, mental, medical or eleemosynary institution, only with respect to the institutional supervision, custody, control, care or treatment of inmates, prisoners or patients therein; provided, that the provisions of Article II shall apply to and govern all administrative actions of the Oklahoma Alcohol Prevention, Training, Treatment and Rehabilitation Authority;
9. The Board of Regents or employees of any university, college, or other institution of higher learning, except with respect to expulsion of any student for disciplinary reasons; provided, that upon any alleged infraction by a student of rules of such institutions, with a lesser penalty than expulsion, such student shall be entitled to such due process, including notice and hearing, as may be otherwise required by law, and the following grounds of misconduct, if properly alleged in disciplinary proceedings against a student, shall be cause to be barred from the campus and be removed from any college or university-owned housing, upon conviction in a court of law:
 - a. participation in a riot as defined by the penal code,
 - b. possession or sale of any drugs or narcotics prohibited by the penal code, or
 - c. willful destruction of or willful damage to state property;
10. The Oklahoma Horse Racing Commission, its employees or agents only with respect to hearing and notice requirements on the following classes of violations which are an imminent peril to the public health, safety and welfare:
 - a. any rule regarding the running of a race,
 - b. any violation of medication laws and rules,
 - c. any suspension or revocation of an occupation license by any racing jurisdiction recognized by the Commission,
 - d. any assault or other destructive acts within Commission-licensed premises,
 - e. any violation of prohibited devices, laws and rules,
 - f. any filing of false information;

11. The Commissioner of Public Safety only with respect to drivers' license hearings and hearings conducted pursuant to the provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;

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

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

14. The Oklahoma Military Department; and

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

SECTION 3. AMENDATORY 75 O.S. 1991, Section 253, as amended by Section 3, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1992, Section 253), is amended to read as follows:

Section 253. A. If an agency finds that an imminent peril to the preservation of the public health, safety, welfare, or other compelling extraordinary circumstance requires an emergency rule, amendment, revision, or revocation of an existing rule, an agency may promulgate, at any time, any such rule, provided the Governor first approves such rule pursuant to the provisions of this section.

B. An emergency rule adopted by an agency shall:

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

2. Specify whether the agency intends to promulgate permanent rules based on or similar in scope to the emergency rules and if permanent rules will be proposed, the approximate date when the permanent rules' notice of intent will be issued;

3. Include an impact statement similar in scope and in kind to that required by Section 303 of this title unless such impact statement is waived specifically by the agency to the extent an agency for good cause finds the preparation of a rule impact statement or the specified contents thereof are unnecessary, impracticable or contrary to the public interest in the process of promulgations a particular rule; and

4. Be transmitted to the Governor including the information required by this subsection.

C. 1. Upon the filing of an adopted emergency rule by an agency with the Governor under the provisions of subsection B of this section, the Governor shall review such rule and shall decide as to whether or not such emergency rule should be approved. Prior to approval of emergency rules, the Governor shall submit the emergency rule to the Secretary of State for review of proper formatting.

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

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

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

2. The Governor shall have fifteen (15) calendar days following submittal to review and approve or disapprove an emergency rule submitted as the result of legislation modifying appropriations or programs of an agency in a manner which creates a need to change the rule prior to the beginning of the succeeding fiscal year. The rule shall not be submitted to the Governor for action prior to the

Governor's approval of the legislation creating the need to change the rule and shall be submitted on or before the 15th day of June following the legislative session during which the legislation was enacted or fifteen (15) calendar days following approval of the legislation by the Governor, whichever is later. Emergency rules submitted pursuant to this paragraph shall be known as programmatic emergency rules.

3. For all other emergency rules, 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.

4. Failure of the Governor to approve an emergency rule within the specified period shall constitute disapproval of the emergency rule.

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

2. A copy of the Governor's approval and the emergency rule, along with the information supplied to the Governor regarding such emergency rule pursuant to Sections 251 and 253 of this title, shall be submitted by the agency to the Speaker of the House of Representatives and the President Pro Tempore of the Senate prior to such rules being submitted to The Oklahoma Register for publication.

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

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

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

H. 1. If an emergency rule is of a continuing nature, the agency promulgating such emergency rule shall initiate proceedings for promulgation of a permanent rule pursuant to Sections 303 through 308.2 of this title.

2. Any promulgated emergency rule shall be made ineffective if:
 - a. disapproved by the Legislature~~†~~
 - b. superceded by the promulgation of permanent rules~~†~~
 - c. any adopted rules based upon such emergency rules are subsequently disapproved pursuant to Section 308 of this title~~†~~ or
 - d. an earlier expiration date is specified by the agency in the rules.
3. a. Emergency rules in effect on the first day of the session shall be null and void on July 15 immediately following sine die adjournment of the Legislature

unless otherwise specifically provided by the Legislature.

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

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

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

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

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

K. Prior to approval or disapproval of a rule by the Governor, an agency may withdraw from review a rule submitted pursuant to the provisions of this section. Notice of such withdrawal shall be given to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and to the Secretary of State for publication in The Oklahoma Register. In order to be promulgated, any such withdrawn rules shall be resubmitted pursuant to the provisions of this section.

SECTION 4. AMENDATORY 75 O.S. 1991, Section 256, as amended by Section 4, Chapter 310, O.S.L. 1992 (75 O.S. Supp. 1992, Section 256), is amended to read as follows:

Section 256. A. 1. The Secretary shall provide for the codification, compilation, indexing and publication of agency rules and Executive Orders in a publication which shall be known as the Oklahoma Administrative Code in the following manner:

- a. on or before January 1, 1992, the Secretary shall compile Executive Orders which are effective pursuant to paragraph 3 of subsection B of this section, and agency rules which have been submitted pursuant to the agency schedule of compliance and have been accepted as properly codified, as set forth in this section, Sections 256.1 and 256.2 of this title, and rules promulgated by the Secretary. Such compilation shall be maintained by the Office of Administrative Rules and shall be updated by agencies, in a manner prescribed by the Secretary, to reflect subsequent permanent rulemaking. Prior to publication of the first Code, as set forth in subparagraph b of this paragraph, the compilation shall constitute the official permanent rules of the state. Effective January 1, 1992, any permanent rule not included in such compilation shall be void and of no effect.
- b. on or before December 1, 1992, the Secretary shall have indexed and published the Oklahoma Administrative Code. To effectuate this provision, the Secretary may contract for the publishing ~~and/or~~ indexing, or both,

of the Oklahoma Administrative Code. Any permanent rule not published in the Code shall be void and of no effect. A finally adopted rule filed and published in The Oklahoma Register may be valid until publication of the next succeeding Code or Code supplement following the date of its final adoption. Provided, a permanent rule which is finally adopted after the closing date for publication in a Code or Code supplement as announced by the Secretary may be valid until publication of the next succeeding Code or Code supplement. A permanent rule which is published in The Oklahoma Register after the closing date for publication in the first Code, as announced by the Secretary, shall be void and of no effect upon publication of the next succeeding Code or Code supplement, if not published in the Code or Code supplement.

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

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

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

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

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

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

2. At the beginning of each fiscal year after July 1, 1992, the Secretary shall, as soon as possible, assemble all rules and Executive Orders, except emergency rules, promulgated during the preceding year in accordance with the provisions of the Administrative Procedures Act for publication in the Oklahoma Administrative Code. The Code or supplements thereto should be published as soon as possible after August 30 of each year.

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

C. The Secretary is hereby authorized and empowered to publish or to contract to publish an Administrative Code, and to publish or contract to publish such annual cumulative supplements so as to keep the Code current. All such agreements shall provide that the publisher shall make such publications in such form and arrangement as shall be approved by the Secretary.

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

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

F. 1. The codification system, indexes, tables and other aids relevant to the publication of the Oklahoma Administrative Code shall be the property of the state. No person shall attempt to copyright or publish such materials without expressed written consent of the Secretary of State.

2. After April 1, 1994, all agencies shall use official copies of the Oklahoma Administrative Code obtained from the Office of Administrative Rules for any publishing purposes.

3. The Secretary of State shall report to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate potential advantages and disadvantages of centralizing the publication for state agencies by the office of the Secretary of State of portions of the Oklahoma Administrative Code. The report shall consider the extent to which the centralization would assist in the self-funding of the operations of the Office of Administrative Rules and associated services involved in publications pursuant to this subsection. The report required by this paragraph shall be submitted by November 1, 1993.

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

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

- c. Four members shall be appointed by the Governor, two of whom shall be the administrative head of agencies of this state and two of whom shall be lay members who have knowledge and experience in administrative law or procedure.
- d. The fifteenth member shall be an attorney from the Office of the Attorney General appointed by the Attorney General.

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

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

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

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

2. The Task Force shall conduct a comprehensive study on the development of a uniform system for codification of rules to implement the provisions of subsection A of this section. The study shall include but not be limited to a review of procedures followed by state agencies in preparing administrative rules, central control and administration of rules by the Secretary, recommendations as to the methods of publication and codification of such rules, schedule for agency compliance, distribution of the Code, submission guidelines for rules, cost of implementation of such publication and codification, and such other information as deemed necessary by the Task Force. The Task Force shall prepare a written report on its findings and recommendations and shall submit such report to the Speaker of the House of Representatives, President Pro Tempore of the Senate and the Governor by January 1, 1991.

3. The Task Force shall terminate on January 1, ~~1994~~ 1995.

SECTION 5. AMENDATORY 75 O.S. 1991, Section 303, is amended to read as follows:

Section 303. A. Prior to the adoption of any rule or amendment or repeal of a rule, the agency shall:

1. Cause notice of any intended action to be published in The Oklahoma Register pursuant to subsection B of this section;
2. Send copies of the notice of such intended action to at least twenty-five newspapers in the metropolitan and rural areas for publication as public service announcements on the subjects involved at the discretion of the editors of such newspapers. The provisions

of this paragraph shall not require an agency to pay for any such publication;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. a brief description of the purpose of the proposed rule~~+~~1
- 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~~+~~1
- c. a description of the classes of persons who will benefit from the proposed rule~~+~~1
- d. a description of the probable economic impact of the proposed rule upon affected classes of persons~~+~~1
- e. the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues~~+~~1, including a projected net loss or gain in such revenues if it can be projected by the agency,
- f. a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule~~+~~1 and
- g. the date the rule impact statement was prepared.

3. To the extent an agency for good cause finds the preparation of a rule impact statement or the specified contents thereof are unnecessary, impracticable or contrary to the public interest in the process of adopting a particular rule, the agency may request the Governor to waive such requirement. If the Governor fails to waive such requirement prior to publication of the notice of the intended rulemaking action, the rule impact statement shall be completed. The determination to waive the rule impact statement shall not be subject to judicial review.

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

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

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

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

Section 308. A. Within ten (10) days after adoption of a permanent rule, two copies of all such new rules or amendments, revisions or revocations to an existing rule proposed by an agency, and two copies of an agency rule report as required by subsection D of this section shall be filed by the agency each with the Speaker of the House of Representatives and the President Pro Tempore of the State Senate.

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

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

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

1. The date the notice of the intended rulemaking action was published in The Oklahoma Register pursuant to Section 255 of this title;

2. The name and address of the agency;

3. The title and number of the rule;

4. A citation to the statutory authority for the rule;

5. A brief summary of the content of the adopted rule;

6. A statement explaining the need for the adopted rule;

7. The date and location of the meeting if held, at which such rules were adopted;

8. A summary of the comments and explanation of changes or lack of any change made in the adopted rules as a result of testimony received at public hearings or of any oral or written comments received prior to the adoption of the rule;

9. A list of persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing;

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

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

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

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

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

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

2. a. (1) The Legislature may by concurrent resolution disapprove a proposed rule or a proposed amendment to a rule submitted to the Legislature pursuant to this section or an emergency rule prior to such rule having the force and effect of law.
- (2) Any such proposed rule or proposed amendment to a permanent rule shall be disapproved by both houses of the Legislature prior to the termination of the legislative review period specified by this section.
- (3) Any such concurrent resolution shall not require the approval of the Governor, and any such rule so disapproved shall be invalid and of no effect regardless of the approval of the Governor of such rule.
- b. By adoption of a concurrent resolution, the Legislature may waive or extend the thirty-legislative-day review period for any rule which has been transmitted as required by this section, provided any extension of the thirty-day review period shall terminate on the end of the same legislative session such rules were transmitted or retransmitted.

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

H. Unless otherwise provided by specific vote of the Legislature, resolutions introduced for purposes of disapproving or approving a rule shall not be subject to regular legislative cutoff dates, shall be limited to such provisions as may be necessary for disapproval or approval of a rule, and any such other direction or mandate regarding the rule deemed necessary by the Legislature. The resolution shall contain no other provisions.

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

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

2. After April 1 of each year, transmission of a rule for legislative review pursuant to the provisions of this section shall result in the approval of such rule by the Legislature only if the Legislature is in regular session and has failed to disapprove such rule within thirty (30) legislative days after such rule has been so transmitted. In the event the Legislature adjourns before the expiration of such thirty (30) legislative days, such rule shall carry over for consideration by the Legislature during the next regular session and shall be considered to have been originally transmitted to the Legislature on the first day of said next regular session for review pursuant to this section. As an alternative, an

agency may request direct legislative approval of such rules or waiver of the thirty-legislative-day review provided by subsection F of this section. An agency may also adopt emergency rules under the provisions of Section 253 of this title.

J. Prior to final adoption of a rule, an agency may withdraw from legislative review a rule submitted pursuant to the provisions of this section. Such rules may be withdrawn in order to comply with legislative direction specified in a resolution passed pursuant to this section or to make technical changes to comply with the provisions of the Administrative Procedures Act. For promulgation, any such withdrawn rules shall be resubmitted to the Legislature pursuant to the provisions of this section. Unless otherwise provided by law or authorization of the Legislature, any such withdrawn rules or rules of an identical nature or similar in scope shall not be promulgated as emergency rules pursuant to Section 253 of this title. Notice of such withdrawal shall be given to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and to the Secretary for publication in The Oklahoma Register.

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

L. Any rights, privileges, or interests gained by any person by operation of an emergency rule, shall not be affected by reason of any subsequent disapproval or rejection of such rule by either house of the Legislature.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 314.1 of Title 75, unless there is created a duplication in numbering, reads as follows:

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

SECTION 8. AMENDATORY Pursuant to the authority vested in the Legislature by Section 35 of Article IX of the Oklahoma Constitution, Section 18 of Article IX of the Oklahoma Constitution, is amended to read as follows:

Section 18. A. The Commission shall have the power and authority and be charged with the duty of supervising, regulating and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses and preventing unjust discrimination and extortion by such companies; ~~and to.~~ To that end the Commission shall, from time to time, prescribe and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities, and conveniences as may be reasonable and just, which said rates, charges, classifications, rules, regulations, and requirements, the Commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the commission, within the scope of its authority, shall be unlawful and void.

B. The commission shall also have the right, at all times, to inspect the books and papers of all transportation and transmission

companies doing business in this State, and to require from such companies, from time to time, special reports and statements, under oath, concerning their business; ~~it.~~

C. The Commission shall keep itself fully informed of the physical condition of all the railroads of the State, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules, and regulations as may be necessary to prevent unjust or unreasonable discrimination and extortion by any transportation or transmission company in favor of, or against any person, locality, community, connecting line, or kind of traffic, in the matter of car service, train or boat schedule, efficiency of transportation, transmission, or otherwise, in connection with the public duties of such company.

D. Before the Commission shall prescribe or fix any rate, charge or classification of traffic, and before it shall make any order, ~~rule, regulation, or requirement~~ directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, ~~or order, rule, regulation, or requirement,~~ shall first be given, by the Commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; ~~and before.~~

E. Before said Commission shall make or prescribe any general order, rule, regulation, or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation, or requirement shall first be published one time in substance in one or more of the newspapers of general circulation published in the county in which the Capitol of this State may be located, together with the notice of the time and place, when and where the Commission will hear any objections which may be urged by any person interested, against the proposed general order, rule, regulation, or requirement; and every such general order, rule, regulation, or requirement, made by the Commission, shall be published at length, for the time and in the manner above specified. In addition to the publication requirements of this section, the Commission shall comply with the Administrative Procedures Act of this state except as specifically provided by that act.

F. The authority of the Commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges, and classifications of traffic, for transportation and transmission companies, shall, subject to regulation by law, be paramount; but its authority to prescribe any other rules, regulations or requirements for corporations or other persons shall be subject to the superior authority of the Legislature to legislate thereon by general laws: Provided, However, That nothing in this section shall impair the rights which have heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town or county to prescribe rules, regulations, or rates of charges to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town, or county, so far as such services may be wholly within the limits of the city, town, or county granting the franchise.

G. Upon the request of the parties interested, it shall be the duty of the Commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies,

between transportation or transmission companies and their patrons or employees.

SECTION 9. This act shall become effective July 1, 1993.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 18th day of May, 1993.

Speaker of the House of
Representatives

Passed the Senate the 24th day of May, 1993.

President of the Senate