ENROLLED HOUSE
BILL NO. 2111

By: Gray of the House

and

Leftwich and Dunlap of the Senate

An Act relating to administrative procedures; amending 74 O.S. 1991, Section 324.13, which relates to administrative procedures; correcting citations; amending 75 O.S. 1991, Sections 250, 250.1, 250.3, as last amended by Section 1, Chapter 182, O.S.L. 1994, 250.4, as last amended by Section 11, Chapter 320, O.S.L. 1996, 250.6, as amended by Section 2, Chapter 384, O.S.L. 1994, 250.7, as amended by Section 3, Chapter 384, O.S.L. 1994, 250.9, 251, as amended by Section 4, Chapter 384, O.S.L. 1994, 253, as last amended by Section 1, Chapter 225, O.S.L. 1996, 255, as amended by Section 1, Chapter 35, O.S.L. 1996, 256, as last amended by Section 6, Chapter 384, O.S.L. 1994, 257.1, 302, 303, as last amended by Section 2, Chapter 225, O.S.L. 1996, 303.1, as last amended by Section 3, Chapter 225, O.S.L. 1996, 304, 308, as last amended by Section 39, Chapter 1, O.S.L. 1995, 308.1, 308.2, as amended by Section 4, Chapter 225, O.S.L. 1996 and 316 (75 O.S. Supp. 1996, Sections 250.3, 250.4, 250.6, 250.7, 251, 253, 255, 256, 303, 303.1, 308 and 308.2), which relate to administrative rules and procedures; clarifying scope of the Administrative Procedures Act; clarifying language; correcting citations; requiring certain filing; requiring rule availability; authorizing and requiring certain agencies to make certain deletions for obsolete rules and statements; requiring internal review of rules; prohibiting certain action; requiring identification of certain rules and statutes; requiring agencies to make certain reports; providing certain extension; providing certain exemption; modifying procedure for promulgating preemptive rules; correcting grammatical errors; removing obsolete language; correcting grammatical errors; modifying impact statement requirements; clarifying language; correcting grammatical errors; requiring additional transmission; providing prospective effective date; adding certain notification requirements; correcting reference; prohibiting certain action and providing exceptions; prescribing expiration date of superseding emergency rules; providing exception; modifying notice requirements; deleting obsolete language; modifying index requirements; providing publication, reproduction, copyright and electronic access requirements of "Oklahoma Administrative

Code" and "The Oklahoma Register"; removing conflicting language; deleting obsolete language; correcting grammatical errors; modifying impact statement requirements; requiring certain filing; providing for certain recommendations; clarifying language; modifying report requirements; transferring notification requirement from agencies to Governor; recognizing certain emergency rules as null and void; clarifying certain language; correcting certain committee name; modifying report requirements; recognizing certain emergency rules as null and void; correcting reference; deleting repetitive language; modifying disqualification procedures; providing for codification; providing for noncodification; and providing an effective date.

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

SECTION 1. AMENDATORY 74 O.S. 1991, Section 324.13, is amended to read as follows:

Section 324.13 The Fire Marshal Commission and the State Fire Marshal shall be subject to the provisions of ~~Sections 1 through 25, Chapter 371, Oklahoma Session Laws 1963, pages 704 through 713 (75 O.S.Supp.1963, Section 301 through Section 325), and shall conduct all hearings and administrative procedures in conformity therewith, and judicial review of any order issued or action taken by the Fire Marshal Commission or the State Fire Marshal shall be as provided for therein, provided that any provisions of law relating to administrative procedures, hearing and appeals in conflict herewith are hereby repealed~~ the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 75 O.S. 1991, Section 250, is amended to read as follows:

Section 250. 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.

SECTION 3. AMENDATORY 75 O.S. 1991, Section 250.1, is amended to read as follows:

Section 250.1 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 ~~250.3~~ 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 ~~309~~ 308a through 323 of ~~Title 75 of the Oklahoma Statutes~~ 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.

SECTION 4. AMENDATORY 75 O.S. 1991, Section 250.3, as last amended by Section 1, Chapter 182, O.S.L. 1994 (75 O.S. Supp. 1996, Section 250.3), is amended to read as follows:

Section 250.3 As used in the Administrative Procedures Act:

1. "Agency" 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~~ G 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;

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

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

SECTION 5. AMENDATORY 75 O.S. 1991, Section 250.4, as last amended by Section 11, Chapter 320, O.S.L. 1996 (75 O.S. Supp. 1996, 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~~ 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 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. a. The Commissioner of Public Safety shall be exempt from ~~Section 253, subsections C and D of Section 303 and~~ Sections 303.1, 304, 307.1, 308 and 308.1 of this title insofar as it is necessary to ~~adopt~~ promulgate rules ~~under~~ pursuant to the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation 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~~ promulgate rules identical to federal rules and regulations.

b. 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~~

c. Such copies of promulgated rules shall be filed with the Secretary as required by Section 251 of this title.

d. 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 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, Section 1 et seq. of Title 21 of the Oklahoma Statutes, or

c. willful destruction of or willful damage to state property;

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

a. any rule regarding the running of a race,

b. any violation of medication laws and rules,

c. any suspension or revocation of an occupation license by any racing jurisdiction recognized by the Commission,

d. any assault or other destructive acts within Commission-licensed premises,

e. any violation of prohibited devices, laws and rules,

f. any filing of false information;

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

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

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

14. The Oklahoma Military Department;

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

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

~~17.~~ 16. The Oklahoma Health Care Authority Board and the Administrator of the Oklahoma Health Care Authority; and

~~18.~~ 17. 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.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 250.4a of Title 75, unless there is created a duplication in numbering, reads as follows:

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.

SECTION 7. A. On or before December 31, 1998, each agency shall review or cause to have reviewed its administrative rules, including those that are not part of the "Oklahoma Administrative Code", which should be modified or repealed because they are obsolete, unenforceable, unnecessarily burdensome, duplicative or of

no administrative benefit. Each agency shall report the rules which it determines should be modified or repealed to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

B. On or before December 31, 1998, each agency shall review or cause to have reviewed its statutes and policies for the purpose of determining whether administrative rules should be adopted pursuant to the Administrative Procedures Act. Each agency shall report the statutes and policies it determines require the adoption of administrative rules to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

C. Any agency with more than one hundred pages of rules in the "Oklahoma Administrative Code" that is unable to meet the December 31, 1998, deadline may have until December 31, 2000, if the agency develops, files, and publishes a schedule for compliance. The schedule shall be filed with the House Administrative Rule Review Committee and shall be published in "The Oklahoma Register" by February 1, 1998.

D. The Board of Regents or Trustees of any university, college, institution or program of higher learning shall not be required to comply with this section.

SECTION 8. AMENDATORY 75 O.S. 1991, Section 250.6, as amended by Section 2, Chapter 384, O.S.L. 1994 (75 O.S. Supp. 1996, Section 250.6), is amended to read as follows:

Section 250.6 A. 1. The Commission for Human Services may promulgate a preemptive rule pursuant to the provisions of this section:

a. when the Commission for Human Services is required by federal law, federal rules, a state law enacted pursuant to federal law or federal rule, or order of a court of competent jurisdiction to adopt a rule, or an amendment, revision or revocation of an existing rule, and

b. which if such rule is not immediately adopted would result in the imposition of a financial penalty, or a reduction, withholding or loss of federal funds, and

c. such preemptive rule has been certified by the Governor pursuant to this section.

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

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

2. Upon the filing of the request for certification of a preemptive rule, the Governor shall review such rule and decide as to whether such rule should be certified. Prior to approval of a preemptive rule, the Governor shall submit the preemptive rule to the Office of the Secretary of State for review of proper formatting unless the preemptive rule has been reviewed by the Office prior to agency submission to the Governor. Failure of the Governor to certify such rule within fourteen (14) calendar days shall constitute denial of the rule as a preemptive rule.

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

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

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

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

C. A preemptive rule shall be considered to be a permanent rule and shall remain in full force and effect unless and until specifically disapproved during the first thirty (30) calendar days of the next regular legislative session following promulgation of such preemptive rule or unless an earlier expiration date is specified by the Commission. The Legislature may disapprove such rule pursuant to Section 308 of this title. Any resolution introduced for the purpose of disapproving such rule shall not be subject to regular legislative cut off dates.

D. 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, 304, ~~307.2,~~ 308 and 308.1 of this title.

SECTION 9. AMENDATORY 75 O.S. 1991, Section 250.7, as amended by Section 3, Chapter 384, O.S.L. 1994 (75 O.S. Supp. 1996, Section 250.7), is amended to read as follows:

Section 250.7 A. Prior to publication in the "Code" or any of its supplements, in cases where there is a conflict between the finally adopted rules filed with the Office pursuant to Section 251 of 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.

SECTION 10. AMENDATORY 75 O.S. 1991, Section 250.9, is amended to read as follows:

Section 250.9 ~~A. Effective July 1, 1991, all of the powers, duties and responsibilities of the Director of the Department of Libraries and the Department of Libraries relating to the publication of The Oklahoma Register and the Administrative Code are hereby transferred to the Office of the Secretary of State together with all unexpended funds, property, records, current agency rules, personnel and any outstanding financial obligations or encumbrances, exclusively or principally pertaining to such publications.~~

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

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

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

~~E. Until January 1, 1992, the Director of the Department of Libraries shall provide, as specified by the Secretary, direct assistance and resources to the Secretary and the Office of Administrative Rules for the compilation and completion of the preparation necessary for the publication of the Oklahoma Administrative Code and for the publication of The Oklahoma Register. Such assistance and resources shall be provided at the same level as was provided for such compilation and preparation of the Code and publication of The Oklahoma Register within the last half of the 1991 fiscal year.~~

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

SECTION 11. AMENDATORY 75 O.S. 1991, Section 251, as amended by Section 4, Chapter 384, O.S.L. 1994 (75 O.S. Supp. 1996, Section 251), is amended to read as follows:

Section 251. A. 1. Upon the request of the Secretary, each agency shall furnish to the Office a complete set of its permanent rules in such form as is required by the Secretary or as otherwise provided by law.

2. The Secretary shall promulgate rules to ensure the effective administration of the provisions of Article I of the Administrative Procedures Act. The rules shall include, but are not limited to, rules prescribing paper size, numbering system, and the format of documents required to be filed pursuant to the provisions of the Administrative Procedures Act or such other requirements as deemed

necessary by the Secretary to implement the provisions of the Administrative Procedures Act.

B. 1. Each agency shall file the number of copies specified by the Secretary of all new rules, and all amendments, revisions or revocations of existing rules attested to by the agency, pursuant to the provisions of Section 254 of this title, with the Office within thirty (30) calendar days after they become finally adopted.

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

a. shall prepare the rules in plain language which can be easily understood,

b. shall not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to effectively convey the meaning of a rule interpreting that language, the reference shall clearly indicate the portion of the language which is statutory and the portion which is the agency's amplification or interpretation of that language,

c. shall indicate whether a rule is new, amends an existing permanent rule or repeals an existing permanent rule. If a rule amends an existing rule, the rule shall indicate the language to be deleted typed with a line through the language and language to be inserted typed with the new language underscored,

d. shall state if the rule supersedes an existing emergency rule,

e. shall include a reference to any rule requiring a new or revised form in a note to the rule. The Secretary shall insert that reference in "The Oklahoma Register" as a notation to the affected rule,

f. shall prepare, in plain language, an analysis of new or amended rules. The analysis shall include but not be limited to a reference to any statute that the rule interprets, any related statute or any related rule,

g. may include with its rules, brief notes, illustrations, findings of facts, and references to digests of Supreme Court cases, other court decisions, or Attorney General's opinions, and other explanatory material. Such material may be included if the material is labeled or set forth in a manner which clearly distinguishes it from the rules,

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

i. may change the format of existing rules without any rulemaking action by the agency in order to comply with the standard provisions established by the Secretary for "Code" and register publication so long as there is no substantive change to the rule.

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

D. In order to avoid unnecessary expense, an agency may use the published standards established by organizations and technical societies of recognized national standing, other state agencies, or federal agencies by incorporating the standards or rules in its rules or regulations by reference to the specific issue or issues of publications in which the standards are published, without reproducing the standards in full. The standards shall be readily available to the public for examination at the administrative

offices of the agency. In addition, a copy of such standards shall be kept and maintained by the agency pursuant to the provisions of the Preservation of Essential Records Act.

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

F. The Secretary may authorize or require the filing of rules or Executive Orders by or through electronic data or machine readable equipment in such form and manner as is required by the Secretary.

SECTION 12. AMENDATORY 75 O.S. 1991, Section 253, as last amended by Section 1, Chapter 225, O.S.L. 1996 (75 O.S. Supp. 1996, 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;

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, impracticable 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 ~~on the rules~~;

3. Be transmitted to the Governor, and in duplicate to 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 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~~ Office of Administrative Rules.

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

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

F. An emergency rule may be promulgated when the Legislature is not in session provided such emergency rule shall be effective from the date of approval by the Governor or a later date as specified in the approved emergency rule through the first day of the next succeeding Regular Session of the Oklahoma Legislature, after the promulgation of such emergency rule, and shall be in full force and effect through July 14 following such session unless it is made ineffective pursuant to subsection H of this section. Provided, no agency shall adopt any emergency rule which establishes or increases fees, except during such times as the Legislature is in session, when specifically mandated by the Legislature, or when the failure to establish or increase fees would have an adverse effect on a federally administered program or conflicts with an order issued by a court of law.

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 through July 14 following such session unless it is made ineffective pursuant to subsection H of this section.

H. 1. If an emergency rule is of a continuing nature, the agency promulgating such emergency rule shall initiate proceedings for promulgation of a permanent rule pursuant to Sections 303 through 308.2 of this title. 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. 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~~ 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 Sections 303.1 and 308 of this title shall not be applicable to emergency rules promulgated pursuant to the provisions of this section. Provided this shall not be construed to prevent an agency from complying with such requirements at the discretion of such agency.

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

K. Prior to approval or disapproval of an emergency rule by the Governor, an agency may withdraw from review an emergency rule submitted pursuant to the provisions of this section. Notice of such withdrawal shall be given to the Governor, the Speaker of the House of Representatives ~~and~~, the President Pro Tempore of the Senate 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.

SECTION 13. AMENDATORY 75 O.S. 1991, Section 255, as amended by Section 1, Chapter 35, O.S.L. 1996 (75 O.S. Supp. 1996, Section 255), is amended to read as follows:

Section 255. 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 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.

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

SECTION 14. AMENDATORY 75 O.S. 1991, Section 256, as last amended by Section 6, Chapter 384, O.S.L. 1994 (75 O.S. Supp. 1996, 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 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~~ 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 July 31st of each year shall be published in the next succeeding "Code" or supplement thereto.

2. As soon as possible after July 31st 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. ~~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 "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 ~~an~~ 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 ~~such materials~~ 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. ~~After April 1, 1995, all agencies shall obtain an official copy of the relevant portions of the Oklahoma Administrative Code from the Office of Administrative Rules when used as a basis for official publication or when represented as official agency rules~~ The 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.

~~3. The Secretary of State shall report to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate potential advantages and disadvantages of centralizing the publication for state agencies by the office of the Secretary of State of portions of the Oklahoma Administrative Code. The report shall consider the extent to which the centralization would assist in the self-funding of the operations of the Office of Administrative Rules and associated services involved in publications pursuant to this subsection. The report required by this paragraph shall be submitted by February 1, 1995.~~

SECTION 15. AMENDATORY 75 O.S. 1991, Section 257.1, is amended to read as follows:

Section 257.1 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.

SECTION 16. AMENDATORY 75 O.S. 1991, Section 302, is amended to read as follows:

Section 302. 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. 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.

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

E. This section shall not be construed to prohibit an agency issuing an opinion or administrative decision which is authorized by statute provided that, unless such opinion or administrative decision is issued pursuant to the procedures required pursuant to the Administrative Procedures Act, such decision or opinion shall not have the force and effect of law.

SECTION 17. AMENDATORY 75 O.S. 1991, Section 303, as last amended by Section 2, Chapter 225, O.S.L. 1996 (75 O.S. Supp. 1996, 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. 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;

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

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

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

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

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

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

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

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

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

a. a brief description of the purpose of the proposed rule,
b. a description of the classes of persons who most likely will be affected by the proposed rule,

including classes that will bear the costs of the proposed rule,

c. a description of the classes of persons who will benefit from the proposed rule,

d. a description of the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change,

e. the probable costs to the agency and to any other agency of the implementation and enforcement of the state-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 there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule, and

h. the date the rule impact statement was prepared and if modified, the date modified.

3. To the extent an agency for good cause finds the preparation of a rule impact statement or the specified contents thereof are unnecessary, impracticable or contrary to the public interest in the process of adopting a particular rule, the agency may request the Governor to waive such requirement. If the Governor fails to waive such requirement, 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.

SECTION 18. AMENDATORY 75 O.S. 1991, Section 303.1, as last amended by Section 3, Chapter 225, O.S.L. 1996 (75 O.S. Supp. 1996, Section 303.1), is amended to read as follows:

Section 303.1 A. Within ten (10) days after adoption of a permanent rule, a copy of all such new rules or amendments, revisions or revocations to an existing rule proposed by an agency, and a copy of an agency rule report as required by subsection ~~D~~ E of this section shall be filed by the agency with the Governor for approval.

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 agency shall also submit to the Secretary for publication in "The

Oklahoma Register", a statement that the adopted rules have been submitted to the Governor.

~~C.~~ D. The text of the adopted rules shall be submitted to the Governor in the same format as required by the Secretary pursuant to Section 251 of this title.

~~D.~~ 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 ~~costs~~ cost impact of the ~~adopted~~ 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; ~~and~~

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

14. Any other information requested by the Governor.

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

1. If the Governor approves the rule, the Governor shall immediately notify the agency in writing of the approval. ~~Notice~~ A copy of such approval shall be given by the ~~agency~~ Governor to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and to the Secretary for publication in "The Oklahoma Register".

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

~~F.~~ G. 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 G of Section 308 of this title.

SECTION 19. AMENDATORY 75 O.S. 1991, Section 304, is amended to read as follows:

Section 304. 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 or the agency rule report, 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.

SECTION 20. AMENDATORY 75 O.S. 1991, Section 308, as last amended by Section 39, Chapter 1, O.S.L. 1995 (75 O.S. Supp. 1996, 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 E 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. 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 ~~Cooperation~~ 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 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 Legislature.

D. 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.

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; ~~and~~

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

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

F. 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.

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

2. a. (1) The Legislature may by concurrent resolution disapprove a proposed rule or a proposed amendment to a rule submitted to the Legislature pursuant to this section or an emergency rule prior to such rule having the force and effect of law.

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

(3) Any such concurrent resolution shall not require the approval of the Governor, and any such rule so disapproved shall be invalid and of no effect regardless of the approval of the Governor of such rule.

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

H. Unless otherwise authorized by the Legislature by concurrent resolution, or by law, whenever a rule is disapproved as provided in subsection G 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".

I. 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.

J. 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 G of this section. An agency may also adopt emergency rules under the provisions of Section 253 of this title.

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

L. 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.

M. 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 21. AMENDATORY 75 O.S. 1991, Section 308.1, is amended to read as follows:

Section 308.1 A. Upon the approval by the Legislature and the Governor, or upon approval by joint resolution of the Legislature pursuant to subsection ~~F~~ G 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.

SECTION 22. AMENDATORY 75 O.S. 1991, Section 308.2, as amended by Section 4, Chapter 225, O.S.L. 1996 (75 O.S. Supp. 1996, Section 308.2), is amended to read as follows:

Section 308.2 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. ~~If an agency has interpreted, implemented or applied a statute or rule pursuant to written internal policy, letter of understanding, memorandum, or other written documentation, including but not limited to the results of prior audits or examinations, then no different interpretation, implementation or application shall be given to such rule or statute, unless a new statute or judicial interpretation requires a different interpretation or unless a new rule is promulgated by the agency as required by the Administrative Procedures Act, subject to disapproval of such rule by the Legislature in accordance with the Administrative Procedures Act. Rules promulgated by an agency shall state a prospective effective date. In the absence of a stated prospective effective date, rules shall only be effective on and after the date of promulgation.~~

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.

SECTION 23. AMENDATORY 75 O.S. 1991, Section 316, is amended to read as follows:

Section 316. A hearing examiner or agency member shall withdraw from any individual proceeding in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of a hearing examiner or agency member, on the ground of his inability to give a fair and impartial hearing, by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the agency, or, if it affects a member or members of the agency, by the remaining members thereof, if a quorum. Upon the entry of an order of

disqualification affecting a hearing examiner, the agency shall assign another in his stead or shall conduct the hearing itself. Upon the disqualification of a member of an agency, the 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 tem to sit in place of the disqualified member in that proceeding. In further action, after the disqualification of a member of an agency, the provisions of Section 11 of this act shall apply.

SECTION 24. NONCODIFICATION The provisions of Section 7 of this act shall not be codified in the Oklahoma Statutes.

SECTION 25. This act shall become effective November 1, 1997.

Passed the House of Representatives the 12th day of May, 1997.

Speaker of the House of Representatives

Passed the Senate the 13th day of May, 1997.

President of the Senate