

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1236 By: Floyd of the Senate
3 and
4 Faught of the House
5
6

7 [administrative rules - Administrative Procedures
8 Act - emergency rules - repealer - codification -
noncodification - effective date]
9
10

11 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
12 entire bill and insert

13 "An Act relating to administrative rules; amending 75
14 O.S. 2011, Sections 250.3, as amended by Section 2,
Chapter 357, O.S.L. 2013, 253, as amended by Section
15 3, Chapter 357, O.S.L. 2013, 308, as amended by
Section 4, Chapter 357, O.S.L. 2013 and 308.1, as
16 amended by Section 5, Chapter 357, O.S.L. 2013 (75
O.S. Supp. 2015, Sections 250.3, 253, 308 and
17 308.1), which relate to the Administrative
Procedures Act; modifying definitions; modifying
18 expiration date of emergency rules; providing for
approval or disapproval of rule by the Governor;
19 modifying legislative approval and disapproval of
rules; requiring approval of certain rules;
20 modifying final adoption of rule; repealing Section
6, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,
21 Section 308.3), which relates to the omnibus joint
resolution; providing for codification; providing
22 for noncodification; and providing an effective
date.
23

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

1 SECTION 1. AMENDATORY 75 O.S. 2011, Section 250.3, as
2 amended by Section 2, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,
3 Section 250.3), is amended to read as follows:

4 Section 250.3 As used in the Administrative Procedures Act:

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

7 2. "Adopted" means a proposed emergency rule or permanent rule
8 which has been approved by the agency but has not been ~~approved or~~
9 ~~disapproved~~ reviewed by the Legislature and the Governor as provided
10 ~~by Section 253 of this title, or a proposed permanent rule which has~~
11 ~~been approved by the agency, but has not been approved or~~
12 ~~disapproved by the Legislature or by declaration of the Governor as~~
13 ~~provided by subsection D of Section 6 of this act;~~

14 3. "Agency" includes but is not limited to any constitutionally
15 or statutorily created state board, bureau, commission, office,
16 authority, public trust in which the state is a beneficiary, or
17 interstate commission, except:

18 a. the Legislature or any branch, committee or officer
19 thereof, and

20 b. the courts;

21 4. "Emergency rule" means a rule that is made pursuant to
22 Section 253 of this title;

23 5. "Final rule" or "finally adopted rule" means a rule other
24 than an emergency rule, which has ~~not been published pursuant to~~

1 ~~Section 255 of this title but is otherwise in compliance with the~~
2 ~~requirements of the Administrative Procedures Act, and is:~~

3 a. ~~approved by the Legislature pursuant to Section 6 of~~
4 ~~this act, provided that any such joint resolution~~
5 ~~becomes law in accordance with Section 11 of Article~~
6 ~~VI of the Oklahoma Constitution,~~

7 b. ~~approved by the Governor pursuant to subsection D of~~
8 ~~Section 6 of this act,~~

9 c. ~~approved by a joint resolution pursuant to subsection~~
10 ~~B of Section 308 of this title, provided that any such~~
11 ~~resolution becomes law in accordance with Section 11~~
12 ~~of Article VI of the Oklahoma Constitution, or~~

13 d. ~~disapproved by a joint resolution pursuant to~~
14 ~~subsection B of Section 308 of this title or Section 6~~
15 ~~of this act, which has been vetoed by the Governor in~~
16 ~~accordance with Section 11 of Article VI of the~~
17 ~~Oklahoma Constitution and the veto has not been~~
18 ~~overridden~~

19 been approved by the Legislature and by the Governor, or approved by
20 the Legislature pursuant to subsection B of Section 308 of this
21 title and otherwise complies with the requirements of the
22 Administrative Procedures Act but has not been published pursuant to
23 Section 255 of this title;
24

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

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

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

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

17 10. "Office" means the Office of the Secretary of State;

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

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

23 13. "Permanent rule" means a rule that is made pursuant to
24 Section 303 of this title;

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

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

6 16. "Promulgated" means a finally adopted rule which has been
7 filed and published in accordance with the provisions of the
8 Administrative Procedures Act, or an emergency rule or preemptive
9 rule which has been approved by the Governor;

10 17. "Rule" means any agency statement or group of related
11 statements of general applicability and future effect that
12 implements, interprets or prescribes law or policy, or describes the
13 procedure or practice requirements of the agency. The term "rule"
14 includes the amendment or revocation of an effective rule but does
15 not include:

- 16 a. the issuance, renewal, denial, suspension or
17 revocation or other sanction of an individual specific
18 license,
19 b. the approval, disapproval or prescription of rates.
20 For purposes of this subparagraph, the term "rates"
21 shall not include fees or charges fixed by an agency
22 for services provided by that agency including but not
23 limited to fees charged for licensing, permitting,
24 inspections or publications,

- c. statements and memoranda concerning only the internal management of an agency and not affecting private rights or procedures available to the public,
- d. declaratory rulings issued pursuant to Section 307 of this title,
- e. orders by an agency, or
- f. press releases or "agency news releases", provided such releases are not for the purpose of interpreting, implementing or prescribing law or agency policy;

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

19. "Secretary" means the Secretary of State.

SECTION 2. AMENDATORY 75 O.S. 2011, Section 253, as amended by Section 3, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015, Section 253), is amended to read as follows:

Section 253. A. 1. If an agency finds that a rule is necessary as an emergency measure, the rule may be promulgated pursuant to the provisions of this section, if the rule is first approved by the Governor. The Governor shall not approve the adoption, amendment, revision or revocation of a rule as an emergency measure unless the agency submits substantial evidence that the rule is necessary as an emergency measure to do any of the following:

- a. protect the public health, safety or welfare,

- b. comply with deadlines in amendments to an agency's governing law or federal programs,
- c. avoid violation of federal law or regulation or other state law,
- d. avoid imminent reduction to the agency's budget, or
- e. avoid serious prejudice to the public interest.

As used in this subsection, "substantial evidence" shall mean credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.

2. In determining whether a rule is necessary as an emergency measure, the Governor shall consider whether the emergency situation was created due to the agency's delay or inaction and could have been averted by timely compliance with the provisions of this chapter.

B. An emergency rule adopted by an agency shall:

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

2. a. Include an impact statement which meets the requirements set forth in subparagraph b of this paragraph unless the Governor waives the requirement in writing upon a finding that the rule impact statement or the specified contents thereof are unnecessary or contrary to the public interest.

1 b. The rule impact statement shall include, but not be
2 limited to:

3 (1) a brief description of the proposed rule,

4 (2) a description of the persons who most likely will
5 be affected by the proposed rule, including
6 classes that will bear the costs of the proposed
7 rule, and any information on cost impacts
8 received by the agency from any private or public
9 entities,

10 (3) a description of the classes of persons who will
11 benefit from the proposed rule,

12 (4) a description of the probable economic impact of
13 the proposed rule upon affected classes of
14 persons or political subdivisions, including a
15 listing of all fee changes and, whenever
16 possible, a separate justification for each fee
17 change,

18 (5) the probable costs and benefits to the agency and
19 to any other agency of the implementation and
20 enforcement of the proposed rule, and any
21 anticipated effect on state revenues, including a
22 projected net loss or gain in such revenues if it
23 can be projected by the agency,

24

1 (6) a determination of whether implementation of the
2 proposed rule may have an adverse economic effect
3 on small business as provided by the Oklahoma
4 Small Business Regulatory Flexibility Act,

5 (7) an explanation of the measures the agency has
6 taken to minimize compliance costs and a
7 determination of whether there are less costly or
8 nonregulatory methods or less intrusive methods
9 for achieving the purpose of the proposed rule,

10 (8) a determination of the effect of the proposed
11 rule on the public health, safety and environment
12 and, if the proposed rule is designed to reduce
13 significant risks to the public health, safety
14 and environment, an explanation of the nature of
15 the risk and to what extent the proposed rule
16 will reduce the risk,

17 (9) a determination of any detrimental effect on the
18 public health, safety and environment if the
19 proposed rule is not implemented, and

20 (10) the date the rule impact statement was prepared
21 and if modified, the date modified.

22 c. The rule impact statement shall be prepared on or
23 before the date the emergency rule is adopted;
24

1 3. Be transmitted pursuant to Section 464 of Title 74 of the
2 Oklahoma Statutes to the Governor, the Speaker of the Oklahoma House
3 of Representatives and the President Pro Tempore of the Senate,
4 along with the information required by this subsection within ten
5 (10) days after the rule is adopted; and

6 4. Not be invalidated on the ground that the contents of the
7 rule impact statement are insufficient or inaccurate.

8 C. 1. Within forty-five (45) calendar days of receipt of a
9 proposed emergency rule filed with the Governor, the Speaker of the
10 Oklahoma House of Representatives and the President Pro Tempore of
11 the Senate, the Governor shall review the demonstration of emergency
12 pursuant to subsection A of this section, and shall separately
13 review the rule in accordance with the standards prescribed in
14 paragraph 3 of this subsection.

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

18 3. If the Governor determines the agency has established the
19 rule is necessary as an emergency measure pursuant to subsection A
20 of this section, the Governor shall approve the proposed emergency
21 rule if the rule is:

22 a. clear, concise and understandable,

23 b. within the power of the agency to make and within the
24 enacted legislative standards, and

1 c. made in compliance with the requirements of the
2 Administrative Procedures Act.

3 D. 1. Within the forty-five-calendar-day period set forth in
4 paragraph 1 of subsection C of this section, the Governor may
5 approve the emergency rule or disapprove the emergency rule.
6 Failure of the Governor to approve an emergency rule within the
7 specified period shall constitute disapproval of the emergency rule.

8 2. If the Governor disapproves the adopted emergency rule, the
9 Governor shall return the entire document to the agency with reasons
10 for the disapproval. If the agency elects to modify the rule, the
11 agency shall adopt the modifications, and shall file the modified
12 rule in accordance with the requirements of subsection B of this
13 section.

14 3. Upon disapproval of an emergency rule, the Governor shall,
15 within fifteen (15) days, make written notification to the Speaker
16 of the House of Representatives, the President Pro Tempore of the
17 Senate and the Office of Administrative Rules.

18 E. 1. Upon approval of an emergency rule, the Governor shall
19 immediately make written notification to the agency, the Speaker of
20 the House of Representatives, the President Pro Tempore of the
21 Senate and the Office of Administrative Rules. Upon receipt of the
22 notice of the approval, the agency shall file with the Office of
23 Administrative Rules as many copies of the notice of approval and
24 the emergency rule as required by the Secretary.

1 2. Emergency rules shall be subject to legislative review
2 pursuant to Section 308 of this title.

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

8 F. 1. Upon approval by the Governor, an emergency rule shall
9 be considered promulgated and shall be in force immediately, or on
10 such later date as specified therein. An emergency rule shall only
11 be applied prospectively from its effective date.

12 2. The emergency rule shall remain in full force and effect
13 through the first day of the next succeeding regular session of the
14 Legislature following promulgation of such emergency rule until
15 September 14 following such session, unless it is made ineffective
16 pursuant to subsection H of this section.

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

22 H. 1. If an emergency rule is of a continuing nature, the
23 agency promulgating such emergency rule shall initiate proceedings
24 for promulgation of a permanent rule pursuant to Sections 303

1 through 308.2 of this title. If an emergency rule is superseded by
2 another emergency rule prior to the enactment of a permanent rule,
3 the latter emergency rule shall retain the same expiration date as
4 the superseded emergency rule, unless otherwise authorized by the
5 Legislature.

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

7 a. disapproved by the Legislature,

8 b. superseded by the promulgation of permanent rules,

9 c. any adopted rules based upon such emergency rules are
10 subsequently disapproved pursuant to Section 308 of
11 this title, or

12 d. an earlier expiration date is specified by the agency
13 in the rules.

14 3. a. Emergency rules in effect on the first day of the
15 session shall be null and void on September 15
16 immediately following sine die adjournment of the
17 Legislature unless otherwise specifically provided by
18 the Legislature.

19 b. Unless otherwise authorized by the Legislature, an
20 agency shall not adopt any emergency rule, which has
21 become null and void pursuant to subparagraph a of
22 this paragraph, as a new emergency rule or adopt any
23 emergency rules of similar scope or intent as the
24

1 emergency rules which became null and void pursuant to
2 subparagraph a of this paragraph.

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

5 J. 1. The requirements of Section 303 of this title relating
6 to notice and hearing shall not be applicable to emergency rules
7 promulgated pursuant to the provisions of this section. Provided
8 this shall not be construed to prevent an abbreviated notice and
9 hearing process determined to be necessary by an agency.

10 2. The rule report required pursuant to Section 303.1 of this
11 title shall not be applicable to emergency rules promulgated
12 pursuant to the provisions of this section. Provided this shall not
13 be construed to prevent an agency from complying with such
14 requirements at the discretion of such agency.

15 3. The statement of submission required by Section 303.1 of
16 this title shall not be applicable to emergency rules promulgated
17 pursuant to the provisions of this section.

18 K. Prior to approval or disapproval of an emergency rule by the
19 Governor, an agency may withdraw from review an emergency rule
20 submitted pursuant to the provisions of this section. Notice of
21 such withdrawal shall be given to the Governor, the Speaker of the
22 House of Representatives, the President Pro Tempore of the Senate in
23 accordance with the requirements set forth in Section 464 of Title
24 74 and to the Office of Administrative Rules as required by the

1 Secretary. In order to be promulgated as emergency rules, any
2 replacement rules shall be resubmitted pursuant to the provisions of
3 this section.

4 L. Upon completing the requirements of this section, an agency
5 may promulgate a proposed emergency rule. No emergency rule is
6 valid unless promulgated in substantial compliance with the
7 provisions of this section.

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

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 303.3 of Title 75, unless there
13 is created a duplication in numbering, reads as follows:

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

16 1. If the Governor approves the rule, the Governor shall
17 immediately notify the agency in writing of the approval. A copy of
18 such approval shall be given by the Governor to the Speaker of the
19 House of Representatives and the President Pro Tempore of the
20 Senate. Upon receipt of the approval, the agency shall submit a
21 notice of such approval to the Office of Administrative Rules for
22 publication in "The Oklahoma Register".

23 2. If the Governor disapproves the adopted rule, the Governor
24 shall return the entire document to the agency with reasons in

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

13 B. Rules not approved by the Governor pursuant to the
14 provisions of this section shall not become effective unless
15 otherwise approved by the Legislature by joint resolution pursuant
16 to subsection B of Section 308 of Title 75 of the Oklahoma Statutes.

17 SECTION 4. AMENDATORY 75 O.S. 2011, Section 308, as
18 amended by Section 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,
19 Section 308), is amended to read as follows:

20 Section 308. A. Upon receipt of any adopted rules, the Speaker
21 of the House of Representatives and the President Pro Tempore of the
22 Senate shall assign such rules to the appropriate committees of each
23 house of the Legislature for review. Except as otherwise provided
24 by this section:

1 1. If such rules are received on or before April 1, the
2 Legislature shall have until the last day of the regular legislative
3 session of that year to review such rules; and

4 2. If such rules are received after April 1, the Legislature
5 shall have until the last day of the regular legislative session of
6 the next year to review such rules.

7 B. By the adoption of a joint resolution during the review
8 period specified in subsection A of this section, the Legislature
9 may disapprove or approve any rule.

10 C. Unless otherwise authorized by the Legislature, whenever a
11 rule is disapproved as provided in subsection B of this section, the
12 agency adopting such rules shall not have authority to resubmit an
13 identical rule, except during the first sixty (60) calendar days of
14 the next regular legislative session. Any effective emergency rule
15 which would have been superseded by a disapproved permanent rule
16 shall be deemed null and void on the date the Legislature
17 disapproves the permanent rule. Rules may be disapproved in part or
18 in whole by the Legislature. Upon enactment of any joint resolution
19 disapproving a rule, the agency shall file notice of such
20 legislative disapproval with the Secretary for publication in "The
21 Oklahoma Register".

22 D. Unless otherwise provided by specific vote of the
23 Legislature, joint resolutions introduced for purposes of
24 disapproving or approving a rule ~~or the omnibus joint resolution~~

1 ~~described in Section 6 of this act~~ shall not be subject to regular
2 legislative cutoff dates, shall be limited to such provisions as may
3 be necessary for disapproval or approval of a rule, and any such
4 other direction or mandate regarding the rule deemed necessary by
5 the Legislature. The resolution shall contain no other provisions.

6 E. ~~A proposed permanent rule shall be deemed finally adopted~~
7 ~~if:~~

8 1. ~~Approved by the Legislature pursuant to Section 6 of this~~
9 ~~act, provided that any such joint resolution becomes law in~~
10 ~~accordance with Section 11 of Article VI of the Oklahoma~~
11 ~~Constitution;~~

12 2. ~~Approved by the Governor pursuant to subsection D of Section~~
13 ~~6 of this act;~~

14 3. ~~Approved by a joint resolution pursuant to subsection B of~~
15 ~~this section, provided that any such resolution becomes law in~~
16 ~~accordance with Section 11 of Article VI of the Oklahoma~~
17 ~~Constitution; or~~

18 4. ~~Disapproved by a joint resolution pursuant to subsection B~~
19 ~~of this section or Section 6 of this act which has been vetoed by~~
20 ~~the Governor in accordance with Section 11 of Article VI of the~~
21 ~~Oklahoma Constitution and the veto has not been overridden.~~

22 Except as provided by subsection F of this section, transmission
23 of a rule for legislative review on or before April 1 of each year
24 shall result in the approval of such rule by the Legislature if the

1 Legislature is in regular session and has failed to disapprove such
2 rule before the last day of session after such rule has been
3 submitted pursuant to Section 303.1 of this title.

4 F. Any rule which establishes or increases a fee or fees or any
5 rule by an agency, board or commission created by or that receives
6 its authority from Title 59 of the Oklahoma Statutes shall require
7 approval by the Legislature by joint resolution. If the Legislature
8 fails to approve the rule on or before the last day of the
9 legislative session, the rule shall be deemed disapproved.

10 G. Prior to final adoption of a rule, an agency may withdraw a
11 rule from legislative review. Notice of such withdrawal shall be
12 given to the Governor, the Speaker of the House of Representatives,
13 the President Pro Tempore of the Senate, and to the Secretary for
14 publication in "The Oklahoma Register".

15 H. Except as otherwise provided by Sections 250.4, 250.6 and
16 253 of this title or as otherwise specifically provided by the
17 Legislature, no agency shall promulgate any rule unless reviewed by
18 the Legislature pursuant to this section.

19 ~~G.~~ I. An agency may promulgate an emergency rule only pursuant
20 to Section 253 of this title.

21 ~~H.~~ J. Any rights, privileges, or interests gained by any person
22 by operation of an emergency rule, shall not be affected by reason
23 of any subsequent disapproval or rejection of such rule by either
24 house of the Legislature.

1 SECTION 5. AMENDATORY 75 O.S. 2011, Section 308.1, as
2 amended by Section 5, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,
3 Section 308.1), is amended to read as follows:

4 Section 308.1 A. Upon ~~final adoption~~, the approval by the
5 Legislature and the Governor, or upon approval by joint resolution
6 of the Legislature pursuant to subsection B of Section 308 of this
7 title, a rule shall be considered finally adopted. The agency shall
8 submit ~~the~~ such finally adopted rule to the Secretary for filing and
9 publishing such rule pursuant to Sections 251 and 255 of this title.

10 B. The text of the rule submitted for publication shall be the
11 same as the text of the rule that has been finally adopted.

12 SECTION 6. NEW LAW A new section of law not to be
13 codified in the Oklahoma Statutes reads as follows:

14 The Office of the Secretary of State may promulgate emergency
15 rules to establish separate filing deadlines and review periods for
16 finally adopted rules and to carry out the provisions of this act.

17 SECTION 7. REPEALER Section 6, Chapter 357, O.S.L. 2013
18 (75 O.S. Supp. 2015, Section 308.3), is hereby repealed.

19 SECTION 8. This act shall become effective November 1, 2016."
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1 Passed the House of Representatives the 12th day of April, 2016.

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4 Presiding Officer of the House of
Representatives
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6 Passed the Senate the ____ day of _____, 2016.

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9 Presiding Officer of the Senate
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1 ENGROSSED SENATE
2 BILL NO. 1236

By: Floyd of the Senate

3 and

4 Faught of the House

5
6 [administrative rules - Administrative Procedures
7 Act - emergency rules - repealer - codification -
8 noncodification - effective date]
9

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

11 SECTION 9. AMENDATORY 75 O.S. 2011, Section 250.3, as
12 amended by Section 2, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,
13 Section 250.3), is amended to read as follows:

14 Section 250.3 As used in the Administrative Procedures Act:

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

17 2. "Adopted" means a proposed emergency rule or permanent rule
18 which has been approved by the agency but has not been ~~approved or~~
19 ~~disapproved~~ reviewed by the Legislature and the Governor as provided
20 ~~by Section 253 of this title, or a proposed permanent rule which has~~
21 ~~been approved by the agency, but has not been approved or~~
22 ~~disapproved by the Legislature or by declaration of the Governor as~~
23 ~~provided by subsection D of Section 6 of this act;~~
24

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

5 a. the Legislature or any branch, committee or officer
6 thereof, and

7 b. the courts;

8 4. "Emergency rule" means a rule that is made pursuant to
9 Section 253 of this title;

10 5. "Final rule" or "finally adopted rule" means a rule other
11 than an emergency rule, which has ~~not been published pursuant to~~
12 ~~Section 255 of this title but is otherwise in compliance with the~~
13 ~~requirements of the Administrative Procedures Act, and is:~~

14 a. ~~approved by the Legislature pursuant to Section 6 of~~
15 ~~this act, provided that any such joint resolution~~
16 ~~becomes law in accordance with Section 11 of Article~~
17 ~~VI of the Oklahoma Constitution,~~

18 b. ~~approved by the Governor pursuant to subsection D of~~
19 ~~Section 6 of this act,~~

20 c. ~~approved by a joint resolution pursuant to subsection~~
21 ~~B of Section 308 of this title, provided that any such~~
22 ~~resolution becomes law in accordance with Section 11~~
23 ~~of Article VI of the Oklahoma Constitution, or~~

1 d. ~~disapproved by a joint resolution pursuant to~~
2 ~~subsection B of Section 308 of this title or Section 6~~
3 ~~of this act, which has been vetoed by the Governor in~~
4 ~~accordance with Section 11 of Article VI of the~~
5 ~~Oklahoma Constitution and the veto has not been~~
6 ~~overridden~~

7 been approved by the Legislature and by the Governor, or approved by
8 the Legislature pursuant to subsection B of Section 308 of this
9 title and otherwise complies with the requirements of the
10 Administrative Procedures Act but has not been published pursuant to
11 Section 255 of this title;

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

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

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

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

4 10. "Office" means the Office of the Secretary of State;

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

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

10 13. "Permanent rule" means a rule that is made pursuant to
11 Section 303 of this title;

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

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

17 16. "Promulgated" means a finally adopted rule which has been
18 filed and published in accordance with the provisions of the
19 Administrative Procedures Act, or an emergency rule or preemptive
20 rule which has been approved by the Governor;

21 17. "Rule" means any agency statement or group of related
22 statements of general applicability and future effect that
23 implements, interprets or prescribes law or policy, or describes the
24 procedure or practice requirements of the agency. The term "rule"

1 includes the amendment or revocation of an effective rule but does
2 not include:

3 a. the issuance, renewal, denial, suspension or
4 revocation or other sanction of an individual specific
5 license,

6 b. the approval, disapproval or prescription of rates.
7 For purposes of this subparagraph, the term "rates"
8 shall not include fees or charges fixed by an agency
9 for services provided by that agency including but not
10 limited to fees charged for licensing, permitting,
11 inspections or publications,

12 c. statements and memoranda concerning only the internal
13 management of an agency and not affecting private
14 rights or procedures available to the public,

15 d. declaratory rulings issued pursuant to Section 307 of
16 this title,

17 e. orders by an agency, or

18 f. press releases or "agency news releases", provided
19 such releases are not for the purpose of interpreting,
20 implementing or prescribing law or agency policy;

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

23 19. "Secretary" means the Secretary of State.
24

1 SECTION 10. AMENDATORY 75 O.S. 2011, Section 253, as
2 amended by Section 3, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,
3 Section 253), is amended to read as follows:

4 Section 253. A. 1. If an agency finds that a rule is
5 necessary as an emergency measure, the rule may be promulgated
6 pursuant to the provisions of this section, if the rule is first
7 approved by the Governor. The Governor shall not approve the
8 adoption, amendment, revision or revocation of a rule as an
9 emergency measure unless the agency submits substantial evidence
10 that the rule is necessary as an emergency measure to do any of the
11 following:

- 12 a. protect the public health, safety or welfare,
- 13 b. comply with deadlines in amendments to an agency's
14 governing law or federal programs,
- 15 c. avoid violation of federal law or regulation or other
16 state law,
- 17 d. avoid imminent reduction to the agency's budget, or
- 18 e. avoid serious prejudice to the public interest.

19 As used in this subsection, "substantial evidence" shall mean
20 credible evidence which is of sufficient quality and probative value
21 to enable a person of reasonable caution to support a conclusion.

22 2. In determining whether a rule is necessary as an emergency
23 measure, the Governor shall consider whether the emergency situation
24 was created due to the agency's delay or inaction and could have

1 | been averted by timely compliance with the provisions of this
2 | chapter.

3 | B. An emergency rule adopted by an agency shall:

4 | 1. Be prepared in the format required by Section 251 of this
5 | title;

6 | 2. a. Include an impact statement which meets the
7 | requirements set forth in subparagraph b of this
8 | paragraph unless the Governor waives the requirement
9 | in writing upon a finding that the rule impact
10 | statement or the specified contents thereof are
11 | unnecessary or contrary to the public interest.

12 | b. The rule impact statement shall include, but not be
13 | limited to:

14 | (1) a brief description of the proposed rule,

15 | (2) a description of the persons who most likely will
16 | be affected by the proposed rule, including
17 | classes that will bear the costs of the proposed
18 | rule, and any information on cost impacts
19 | received by the agency from any private or public
20 | entities,

21 | (3) a description of the classes of persons who will
22 | benefit from the proposed rule,

23 | (4) a description of the probable economic impact of
24 | the proposed rule upon affected classes of

1 persons or political subdivisions, including a
2 listing of all fee changes and, whenever
3 possible, a separate justification for each fee
4 change,

5 (5) the probable costs and benefits to the agency and
6 to any other agency of the implementation and
7 enforcement of the proposed rule, and any
8 anticipated effect on state revenues, including a
9 projected net loss or gain in such revenues if it
10 can be projected by the agency,

11 (6) a determination of whether implementation of the
12 proposed rule may have an adverse economic effect
13 on small business as provided by the Oklahoma
14 Small Business Regulatory Flexibility Act,

15 (7) an explanation of the measures the agency has
16 taken to minimize compliance costs and a
17 determination of whether there are less costly or
18 nonregulatory methods or less intrusive methods
19 for achieving the purpose of the proposed rule,

20 (8) a determination of the effect of the proposed
21 rule on the public health, safety and environment
22 and, if the proposed rule is designed to reduce
23 significant risks to the public health, safety
24 and environment, an explanation of the nature of

1 the risk and to what extent the proposed rule
2 will reduce the risk,

3 (9) a determination of any detrimental effect on the
4 public health, safety and environment if the
5 proposed rule is not implemented, and

6 (10) the date the rule impact statement was prepared
7 and if modified, the date modified.

8 c. The rule impact statement shall be prepared on or
9 before the date the emergency rule is adopted;

10 3. Be transmitted pursuant to Section 464 of Title 74 of the
11 Oklahoma Statutes to the Governor, the Speaker of the Oklahoma House
12 of Representatives and the President Pro Tempore of the Senate,
13 along with the information required by this subsection within ten
14 (10) days after the rule is adopted; and

15 4. Not be invalidated on the ground that the contents of the
16 rule impact statement are insufficient or inaccurate.

17 C. 1. Within forty-five (45) calendar days of receipt of a
18 proposed emergency rule filed with the Governor, the Speaker of the
19 Oklahoma House of Representatives and the President Pro Tempore of
20 the Senate, the Governor shall review the demonstration of emergency
21 pursuant to subsection A of this section, and shall separately
22 review the rule in accordance with the standards prescribed in
23 paragraph 3 of this subsection.

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

4 3. If the Governor determines the agency has established the
5 rule is necessary as an emergency measure pursuant to subsection A
6 of this section, the Governor shall approve the proposed emergency
7 rule if the rule is:

- 8 a. clear, concise and understandable,
- 9 b. within the power of the agency to make and within the
10 enacted legislative standards, and
- 11 c. made in compliance with the requirements of the
12 Administrative Procedures Act.

13 D. 1. Within the forty-five-calendar-day period set forth in
14 paragraph 1 of subsection C of this section, the Governor may
15 approve the emergency rule or disapprove the emergency rule.
16 Failure of the Governor to approve an emergency rule within the
17 specified period shall constitute disapproval of the emergency rule.

18 2. If the Governor disapproves the adopted emergency rule, the
19 Governor shall return the entire document to the agency with reasons
20 for the disapproval. If the agency elects to modify the rule, the
21 agency shall adopt the modifications, and shall file the modified
22 rule in accordance with the requirements of subsection B of this
23 section.

1 3. Upon disapproval of an emergency rule, the Governor shall,
2 within fifteen (15) days, make written notification to the Speaker
3 of the House of Representatives, the President Pro Tempore of the
4 Senate and the Office of Administrative Rules.

5 E. 1. Upon approval of an emergency rule, the Governor shall
6 immediately make written notification to the agency, the Speaker of
7 the House of Representatives, the President Pro Tempore of the
8 Senate and the Office of Administrative Rules. Upon receipt of the
9 notice of the approval, the agency shall file with the Office of
10 Administrative Rules as many copies of the notice of approval and
11 the emergency rule as required by the Secretary.

12 2. Emergency rules shall be subject to legislative review
13 pursuant to Section 308 of this title.

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

19 F. 1. Upon approval by the Governor, an emergency rule shall
20 be considered promulgated and shall be in force immediately, or on
21 such later date as specified therein. An emergency rule shall only
22 be applied prospectively from its effective date.

23 2. The emergency rule shall remain in full force and effect
24 through the first day of the next succeeding regular session of the

1 Legislature following promulgation of such emergency rule until
2 September 14 following such session, unless it is made ineffective
3 pursuant to subsection H of this section.

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

9 H. 1. If an emergency rule is of a continuing nature, the
10 agency promulgating such emergency rule shall initiate proceedings
11 for promulgation of a permanent rule pursuant to Sections 303
12 through 308.2 of this title. If an emergency rule is superseded by
13 another emergency rule prior to the enactment of a permanent rule,
14 the latter emergency rule shall retain the same expiration date as
15 the superseded emergency rule, unless otherwise authorized by the
16 Legislature.

17 2. Any promulgated emergency rule shall be made ineffective if:
18 a. disapproved by the Legislature,
19 b. superseded by the promulgation of permanent rules,
20 c. any adopted rules based upon such emergency rules are
21 subsequently disapproved pursuant to Section 308 of
22 this title, or
23 d. an earlier expiration date is specified by the agency
24 in the rules.

1 3. a. Emergency rules in effect on the first day of the
2 session shall be null and void on September 15
3 immediately following sine die adjournment of the
4 Legislature unless otherwise specifically provided by
5 the Legislature.

6 b. Unless otherwise authorized by the Legislature, an
7 agency shall not adopt any emergency rule, which has
8 become null and void pursuant to subparagraph a of
9 this paragraph, as a new emergency rule or adopt any
10 emergency rules of similar scope or intent as the
11 emergency rules which became null and void pursuant to
12 subparagraph a of this paragraph.

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

15 J. 1. The requirements of Section 303 of this title relating
16 to notice and hearing shall not be applicable to emergency rules
17 promulgated pursuant to the provisions of this section. Provided
18 this shall not be construed to prevent an abbreviated notice and
19 hearing process determined to be necessary by an agency.

20 2. The rule report required pursuant to Section 303.1 of this
21 title shall not be applicable to emergency rules promulgated
22 pursuant to the provisions of this section. Provided this shall not
23 be construed to prevent an agency from complying with such
24 requirements at the discretion of such agency.

1 3. The statement of submission required by Section 303.1 of
2 this title shall not be applicable to emergency rules promulgated
3 pursuant to the provisions of this section.

4 K. Prior to approval or disapproval of an emergency rule by the
5 Governor, an agency may withdraw from review an emergency rule
6 submitted pursuant to the provisions of this section. Notice of
7 such withdrawal shall be given to the Governor, the Speaker of the
8 House of Representatives, the President Pro Tempore of the Senate in
9 accordance with the requirements set forth in Section 464 of Title
10 74 and to the Office of Administrative Rules as required by the
11 Secretary. In order to be promulgated as emergency rules, any
12 replacement rules shall be resubmitted pursuant to the provisions of
13 this section.

14 L. Upon completing the requirements of this section, an agency
15 may promulgate a proposed emergency rule. No emergency rule is
16 valid unless promulgated in substantial compliance with the
17 provisions of this section.

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

21 SECTION 11. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 303.3 of Title 75, unless there
23 is created a duplication in numbering, reads as follows:

24

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

3 1. If the Governor approves the rule, the Governor shall
4 immediately notify the agency in writing of the approval. A copy of
5 such approval shall be given by the Governor to the Speaker of the
6 House of Representatives and the President Pro Tempore of the
7 Senate. Upon receipt of the approval, the agency shall submit a
8 notice of such approval to the Office of Administrative Rules for
9 publication in "The Oklahoma Register".

10 2. If the Governor disapproves the adopted rule, the Governor
11 shall return the entire document to the agency with reasons in
12 writing for the disapproval. Notice of such disapproval shall be
13 given by the Governor to the Speaker of the House of Representatives
14 and the President Pro Tempore of the Senate. Failure of the
15 Governor to approve a rule within the specified period shall
16 constitute disapproval of the rule by the Governor. Upon receipt of
17 the disapproval, or upon failure of the Governor to approve the rule
18 within the specified period, the agency shall submit a notice of
19 such disapproval to the Office of Administrative Rules for
20 publication in "The Oklahoma Register". Any effective emergency
21 rule which would have been superseded by a disapproved permanent
22 rule shall be deemed null and void on the date the Governor
23 disapproves the permanent rule.

1 B. Rules not approved by the Governor pursuant to the
2 provisions of this section shall not become effective unless
3 otherwise approved by the Legislature by joint resolution pursuant
4 to subsection B of Section 308 of Title 75 of the Oklahoma Statutes.

5 SECTION 12. AMENDATORY 75 O.S. 2011, Section 308, as
6 amended by Section 4, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,
7 Section 308), is amended to read as follows:

8 Section 308. A. Upon receipt of any adopted rules, the Speaker
9 of the House of Representatives and the President Pro Tempore of the
10 Senate shall assign such rules to the appropriate committees of each
11 house of the Legislature for review. Except as otherwise provided
12 by this section:

13 1. If such rules are received on or before April 1, the
14 Legislature shall have until the last day of the regular legislative
15 session of that year to review such rules; and

16 2. If such rules are received after April 1, the Legislature
17 shall have until the last day of the regular legislative session of
18 the next year to review such rules.

19 B. By the adoption of a joint resolution during the review
20 period specified in subsection A of this section, the Legislature
21 may disapprove or approve any rule.

22 C. Unless otherwise authorized by the Legislature, whenever a
23 rule is disapproved as provided in subsection B of this section, the
24 agency adopting such rules shall not have authority to resubmit an

1 identical rule, except during the first sixty (60) calendar days of
2 the next regular legislative session. Any effective emergency rule
3 which would have been superseded by a disapproved permanent rule
4 shall be deemed null and void on the date the Legislature
5 disapproves the permanent rule. Rules may be disapproved in part or
6 in whole by the Legislature. Upon enactment of any joint resolution
7 disapproving a rule, the agency shall file notice of such
8 legislative disapproval with the Secretary for publication in "The
9 Oklahoma Register".

10 D. Unless otherwise provided by specific vote of the
11 Legislature, joint resolutions introduced for purposes of
12 disapproving or approving a rule ~~or the omnibus joint resolution~~
13 ~~described in Section 6 of this act~~ shall not be subject to regular
14 legislative cutoff dates, shall be limited to such provisions as may
15 be necessary for disapproval or approval of a rule, and any such
16 other direction or mandate regarding the rule deemed necessary by
17 the Legislature. The resolution shall contain no other provisions.

18 E. ~~A proposed permanent rule shall be deemed finally adopted~~
19 ~~if:~~

20 ~~1. Approved by the Legislature pursuant to Section 6 of this~~
21 ~~act, provided that any such joint resolution becomes law in~~
22 ~~accordance with Section 11 of Article VI of the Oklahoma~~
23 ~~Constitution;~~

24

1 ~~2. Approved by the Governor pursuant to subsection D of Section~~
2 ~~6 of this act;~~

3 ~~3. Approved by a joint resolution pursuant to subsection B of~~
4 ~~this section, provided that any such resolution becomes law in~~
5 ~~accordance with Section 11 of Article VI of the Oklahoma~~
6 ~~Constitution; or~~

7 ~~4. Disapproved by a joint resolution pursuant to subsection B~~
8 ~~of this section or Section 6 of this act which has been vetoed by~~
9 ~~the Governor in accordance with Section 11 of Article VI of the~~
10 ~~Oklahoma Constitution and the veto has not been overridden.~~

11 Except as provided by subsection F of this section, transmission
12 of a rule for legislative review on or before April 1 of each year
13 shall result in the approval of such rule by the Legislature if the
14 Legislature is in regular session and has failed to disapprove such
15 rule before the last day of session after such rule has been
16 submitted pursuant to Section 303.1 of this title.

17 F. Any rule which establishes or increases a fee or fees or any
18 rule by an agency, board or commission created by or that receives
19 its authority from Title 59 of the Oklahoma Statutes shall require
20 approval by the Legislature by joint resolution. If the Legislature
21 fails to approve the rule on or before the last day of the
22 legislative session, the rule shall be deemed disapproved.

23 ~~F.~~ G. Prior to final adoption of a rule, an agency may withdraw
24 a rule from legislative review. Notice of such withdrawal shall be

1 given to the Governor, the Speaker of the House of Representatives,
2 the President Pro Tempore of the Senate, and to the Secretary for
3 publication in "The Oklahoma Register".

4 H. Except as otherwise provided by Sections 253, 250.4 and
5 250.6 of this title or as otherwise specifically provided by the
6 Legislature, no agency shall promulgate any rule unless reviewed by
7 the Legislature pursuant to this section.

8 ~~G. I.~~ An agency may promulgate an emergency rule only pursuant
9 to Section 253 of this title.

10 ~~H. J.~~ Any rights, privileges, or interests gained by any person
11 by operation of an emergency rule, shall not be affected by reason
12 of any subsequent disapproval or rejection of such rule by either
13 house of the Legislature.

14 SECTION 13. AMENDATORY 75 O.S. 2011, Section 308.1, as
15 amended by Section 5, Chapter 357, O.S.L. 2013 (75 O.S. Supp. 2015,
16 Section 308.1), is amended to read as follows:

17 Section 308.1 A. Upon ~~final adoption~~, the approval by the
18 Legislature and the Governor, or upon approval by joint resolution
19 of the Legislature pursuant to subsection B of Section 308 of this
20 title, a rule shall be considered finally adopted. The agency shall
21 submit the such finally adopted rule to the Secretary for filing and
22 publishing such rule pursuant to Sections 251 and 255 of this title.

23 B. The text of the rule submitted for publication shall be the
24 same as the text of the rule that has been finally adopted.

1 SECTION 14. NEW LAW A new section of law not to be
2 codified in the Oklahoma Statutes reads as follows:

3 The Office of the Secretary of State may promulgate emergency
4 rules to establish separate filing deadlines and review periods for
5 finally adopted rules and to carry out the provisions of this act.

6 SECTION 15. REPEALER Section 6, Chapter 357, O.S.L. 2013
7 (75 O.S. Supp. 2015, Section 308.3), is hereby repealed.

8 SECTION 16. This act shall become effective November 1, 2016.
9 Passed the Senate the 10th day of March, 2016.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2016.

Presiding Officer of the House
of Representatives