

**An Overview of  
OKLAHOMA'S PERMANENT RULEMAKING PROCESS  
FOR  
▪ Rules of "Title 59 Agencies"\*  
▪ Rules that Establish or Increase Fees**

\* An agency, board, or commission created by or that receives its authority from Title 59 of the Oklahoma Statutes [HB1044 (2011)]

**(a) DRAFTING PROPOSED RULES.**

- (1) Agency determines need for new rules and/or revisions to existing rules.
- (2) Agency drafts proposed rules pursuant to numbering and format requirements in SOS's rules, using underscoring and strikeouts to identify new and deleted language [75:303.1(D); OAC 655:10]. [For SOS's formatting/numbering requirements, see OAC 655:10-3 and 655:10-5; for examples, see Example 14 in *Examples of Document Formats*.]

**IMPORTANT NOTE ABOUT FEES:** Agencies may NOT establish or increase fees when the Legislature is NOT in session, *UNLESS specifically mandated by the Legislature or federal legislation, or when the failure to establish or increase fees would conflict with an order issued by a court of law* [74:3117]. [See notice requirements in step (b)(3)]

**(b) NOTIFICATION OF INTENDED RULEMAKING.**

- (1) Agency files **Notice of Rulemaking Intent (NRI)** with Office of Administrative Rules (OAR) [75:303]. OAR reviews, accepts, and publishes NRI in *Register*. The NRI includes the following information:
  - (A) Summary of proposed rules, need, intended effect, and legal authority [75:303(B)(1)-(5)].
  - (B) Dates of minimum 30-day comment period, and how to submit comments [75:303(B)(7) and (A)(3)].
  - (C) Date, time, and location of public hearing, scheduled for at least 30 days after NRI's publication - OR, if no hearing is scheduled, how and where persons can demand a hearing [75:303(B)(6) and (9), (A)(3), and (C)].
  - (D) How interested parties can obtain copies of proposed rules [75:303(B)(10)].
  - (E) Scheduled availability of **Rule Impact Statement (RIS)** [no later than 15 days after publication of NRI], unless requirement for RIS was waived in writing by Governor prior to NRI publication [75:303(D)(3)], and how interested parties can obtain copies of RIS [75:303(B)(8)].
  - (F) Request for input from business entities, if agency determines that business entities will be affected by proposed rules [75:303(B)(6)].

**TIME COMPUTATIONS** ---When computing any period of time required or allowed by the APA, *the day of the act, or event, from which the designated period of time begins to run shall NOT be included*. In addition, when computing any time period *other than the earliest possible effective date for finally adopted permanent rules, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday . . . , or any other day when the receiving office does not remain open for public business until 4:00 p.m.* [75:250.8].

- (2) On or before publication of NRI, if agency determines that proposed rules may have *adverse economic effect upon small business* [75:504(B)], agency submits copy of proposed rules and RIS to Small Business Regulatory Review Committee (SBRRC). [75:504]  
*[Note: Within the review and comment period, if the [SBRRC] determines that the proposed rules may have an adverse economic effect upon small business, the [SBRRC] shall submit to the agency a request to consider . . . less restrictive alternatives . . . and creative, innovative, or flexible methods of compliance [75:504(C)].]*
- (3) If proposed rules establish or increase a fee, agency notifies the Governor, Speaker of House, President Pro Tempore of Senate, and House Administrative Rules and Agency Oversight Committee of intended action *[p]rior to the establishment or increase of [the] fee* [74:3117]. Notice includes *justification for the fee . . . and all supportive documentation* [74:3117].
- (4) Within 3 days after NRI is published:
  - (A) Agency sends copies of NRI and RIS to persons who have made a timely request for advance notice of agency's rulemaking proceedings.

**- AND/OR -**

- (B) Agency electronically notifies interested persons that copy of proposed rules and RIS may be viewed on agency's website. [75:303(A)]
- (5) Within 15 days after NRI is published, or by an earlier date, as announced in NRI, agency prepares RIS, unless requirement was waived by Governor prior to publication of NRI. Agency makes RIS available to public upon request [75:303(D)].

(c) **PUBLIC INPUT.**

- (1) **Comment period.** Agency conducts comment period, as announced in NRI.
- (2) **Public hearing.**
  - (A) If hearing was announced in NRI, agency conducts public hearing.
  - OR -
  - (B) If no hearing was announced in NRI, and if hearing is demanded by qualifying party(ies), as identified in 75:303(C)(1), agency returns to step (b) and publishes another NRI announcing a hearing date that is at least 30 days after publication of the new NRI.

(d) **ADOPTION.**

- (1) Agency considers public comments, and determines if changes to proposed rules are needed as result of public comments.
- (2) Agency proceeds pursuant to **one of the following:**
  - (A) Agency adopts rules as proposed (i.e., without revision).
  - OR -
  - (B) Agency revises rules in response to public comments AND:
    - (i) adopts rules as revised,
    - OR -
    - (ii) determines that additional public comment should be solicited, and returns to step (b) to publish another NRI.

AFTER THIS POINT, A NOTICE OF WITHDRAWN RULES MUST BE FILED IF THE AGENCY DISCONTINUES THE RULEMAKING ACTION --- If agency discontinues a rulemaking action after adoption [step (d)] and prior to final adoption [step (f)], agency notifies Governor and Legislature, and submits Notice of Withdrawn Rules to OAR for publication in Register [75:308(G); OAC 655:10-7-33].

(e) **REVIEW OF ADOPTED (PROPOSED) RULES.**

- (1) **Filing adopted rules for review.**
  - (A) Within 10 calendar days after adoption, agency files **adopted rules** and **Agency Rule Report** (including RIS) with Governor and Legislature [75:303.1(A)]. In addition, if proposed rules impact political subdivisions [defined in 75:250.3(13) as a *county, city, incorporated town or school district*], agency files same with Oklahoma Advisory Committee on Intergovernmental Relations [75:303.1(B)].
  - (B) As soon as possible after filing with Governor/Legislature, agency files **Statement of Submission for Review (SR)** with OAR [75:303.1(C)]. OAR reviews, accepts, and publishes SR in *Register*.
- (2) **Review of proposed rules.**
  - (A) **REVIEW/ACTION BY OAR.** Upon receipt by Governor, copy of proposed rules is forwarded to OAR for numbering/format review. OAR reviews and returns "**red-marked pages**" (**RMP's**) or "**format-approved pages**" (**FAP's**) directly to agency. [Note: Agency retains RMP's or FAP's for use in preparing "finally adopted" rules for submission to OAR in step (g).]
  - (B) **REVIEW/ACTION BY GOVERNOR.** Within 45 calendar days after rules are filed with Governor, Governor approves or disapproves proposed rules in their entirety, pursuant to **one of the following** [75:303.2(A)]:
    - (i) **Approval.** Governor **approves** in writing and notifies agency and Legislature. [75:303.2(A)(1)]
    - (ii) **Disapproval.** Governor **disapproves** actively or inactively pursuant to **one of the following:**
      - (l) **ACTIVE DISAPPROVAL.** Governor returns entire document to agency with reasons in writing for disapproval, and notifies Legislature of disapproval.

- OR -

(II) **INACTIVE DISAPPROVAL.** Governor does not approve or disapprove rules within 45-calendar-day review period, constituting disapproval of rules. [75:303.2(A)(2)]

[**Note:** Rules that are disapproved by the Governor cannot become "finally adopted" in step (f) UNLESS the Legislature actively approves the rules by joint resolution in step (e)(2)(C)(i) [75:303.2(B)]. ALSO, any **effective emergency rule that would have been superseded by a disapproved permanent rule** is deemed null and void on the date the Governor disapproves the permanent rule [75:303.2 (A)(2)].]

(C) **REVIEW/ACTION BY LEGISLATURE.** Legislature approves or disapproves proposed rules, in whole or in part, pursuant to **one of the following** [75:308]:

(i) **Approval.** Legislature actively **approves** by joint resolution **prior to sine die adjournment**, and joint resolution is signed by Governor or Governor's veto is overridden by Legislature [75:308(F); HB 1044 (2011)]. [**Note:** Rules approved by a joint resolution prior to sine die adjournment (and signed by the Governor, or vetoed by the Governor but overridden by the Legislature) are considered "finally adopted" in step (f), even if the rules were disapproved by the Governor during Governor's 45-calendar-day review period in step (e)(2)(B)(ii).]

(ii) **Disapproval.** Legislature **disapproves** pursuant to **one of the following**:

(I) **INACTIVE DISAPPROVAL.** Rules are deemed disapproved if Legislature fails to actively approve the rules by joint resolution prior to sine die adjournment (with Governor's signature) in step (e)(2)(C)(i), or approves by joint resolution but Governor vetoes resolution and Legislature does not override prior to end of session. [75:308(F); HB 1044 (2011)]

- OR -

(II) **ACTIVE DISAPPROVAL.** Legislature actively disapproves pursuant to one of the following:

a. **By Joint Resolution.** Legislature disapproves by joint resolution, and Governor either signs joint resolution or Governor's veto is overridden by Legislature [75:308(B) and (F)].

- OR -

b. **By Concurrent Resolution.** Legislature disapproves by concurrent resolution "prior to the termination of the Legislative review period" [75:308(B)(2)(a)(2)] --- i.e., prior to sine die adjournment pursuant to HB 1044 (2011), §2(F). [**Note:** Concurrent resolutions are not sent to the Governor for approval.]

[**IMPORTANT NOTE ABOUT DISAPPROVED RULES** --- Rules that are disapproved by the Legislature in step (e)(2)(C)(ii) cannot become "finally adopted" in step (f). In addition, any **effective emergency rule that would have been superseded by a disapproved permanent rule** is considered null and void as of the date of legislative disapproval of the permanent rule [75:308(C)] - i.e., upon sine die adjournment if inactively disapproved in step (e)(2)(C)(ii)(I), or upon date Governor signs a joint resolution disapproving the rule (or date Legislature overrides Governor's veto), or upon date concurrent resolution disapproving the rule passes both houses of Legislature.

(3) **Filing approval/disapproval notices for publication.**

(A) **GUBERNATORIAL APPROVALS/DISAPPROVALS.**

(i) **Gubernatorial approvals.** After receiving written approval from Governor, agency files **Notice of Gubernatorial Approval (GA)** with OAR. [75:303.2(A)(1)] OAR reviews, accepts, and publishes GA in *Register*.

(ii) **Gubernatorial disapprovals.** After receiving written disapproval (or after Governor fails to approve within 45-calendar-day review period), agency files **Notice of Gubernatorial Disapproval (GD)** with OAR. [75:303.2(A)(2)] OAR reviews, accepts, and publishes GD in *Register*.

(B) **LEGISLATIVE APPROVALS/DISAPPROVALS.**

(i) **Legislative approvals.** Agencies do NOT notify the OAR or any other parties when permanent rules are approved by the Legislature. However, the legislative approval date is identified in the Permanent Rule Document that is submitted to the OAR within 30 calendar days after rules are considered "finally adopted" [see steps (f) and (g)(1)].

(ii) **Legislative disapprovals.** After rules are disapproved by Legislature, actively or inactively in step (e)(2)(C)(ii), agency files **Notice of Legislative Disapproval (LD)** and, if actively disapproved, a **copy of the joint or concurrent resolution disapproving the rules** with OAR [75:308(C)]. OAR reviews, accepts, and publishes in *Register*.

(f) **FINAL ADOPTION.**

Rules are considered "finally adopted" when rules are approved by joint resolution of the Legislature prior to sine die adjournment **AND**:

(1) Governor signs the joint resolution [see step (e)(2)(C)(i)].

**- OR -**

(2) Governor vetoes joint resolution, and Legislature overrides the Governor's veto [see step (e)(2)(C)(i)].

**AFTER THIS POINT, AGENCY MAY NOT WITHDRAW RULES** --- After final adoption [step (f)], rules may no longer be withdrawn from the rulemaking process. Agency must proceed with promulgation of the finally adopted rules [step (g)]. [75:308(G)]

(g) **PROMULGATION.**

(1) Within 30 calendar days after rules become finally adopted, agency submits **Permanent Rule Document (PER)** to OAR [75:251(B)(1)], along with RMP's or FAP's [see step (e)(2)(A)]. **[Note:** PER includes the "finally adopted" rules, as well as a preamble that summarizes the rulemaking action and identifies effective date and other pertinent information. See OAC 655:10-7, Part 3 for additional information about PER contents.]

(2) OAR reviews, accepts, and publishes PER in *Register*.

(3) Rules are considered "promulgated" upon publication in *Register* [75:250.3(14)].

(h) **EFFECTIVENESS.**

Rules are effective on date stated in preamble of published PER. [Effective date must be at least ten calendar days after publication of PER in *Register*.] [75:304(B)(1); 75:250.8]