

# Checklist for EMERGENCY Rulemaking

*under*  
**Oklahoma's Rulemaking Process**

*For use with the Secretary of State's  
Administrative Rules on Rulemaking [OAC 655:10]*

Revised 4-4-16

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These checklists are NOT RULES, but have been prepared by the Office of Administrative Rules to assist rulemaking entities in meeting their obligations under Administrative Rules on Rulemaking (ARR) and the Administrative Procedures Act (APA). These checklists are illustrative only and should not be considered to prescribe any original rulemaking. ***Rulemaking entities are advised that use of the checklists for rulemaking does not validate the rulemaking, nor does it relieve the rulemaking entity of its legal responsibility to fully comply with all provisions of the APA and ARR.***

# Checklist for EMERGENCY Rulemaking

## INSTRUCTIONS

### HOW TO PROCEED THROUGH CHECKLIST:

**Marking the steps.** Mark each step (designated 1, 2, 3, etc.) upon its completion and follow the instructions for proceeding.

- If a step consists of **two or more requirements** (connected by "- AND -"), each requirement should be completed before marking the step as complete.
- If a step consists of **two or more alternatives** (separated by "- OR -"), the appropriate alternative(s) should be completed before marking the step as complete.

**"[optional]" designations.** If an italicized heading is followed by "[optional]", the agency must use its discretion in completing the step or steps listed under the heading. If the agency elects not to complete the step or steps, the agency should proceed to the next italicized heading.

**"[if applicable]" designations.** If an italicized heading is followed by "[if applicable]", the agency should complete the step or steps listed below the heading only if they are applicable. If not applicable, proceed to the next italicized heading.

**Statute/rule citations.** Citations to related statutes or rules are given throughout the checklist.

- Citations which begin with "75:" refer to sections of the Administrative Procedures Act (Title 75, Sections 250 et seq.) in the Oklahoma Statutes.
- Citations which begin with "OAC" refer to rules in *The Oklahoma Administrative Code*.

### SCOPE OF RULEMAKING ACTION (one Chapter only):

Each "rulemaking action" is limited in scope to **one Chapter** (i.e., Sections/Appendices from more than one Chapter may not be combined in a single Notice of Rulemaking Intent [step 3] or emergency rule document [step 9]). [For further information on scope of a rulemaking action, see OAC 655:10-7-50 through 655:10-7-54]

### WITHDRAWAL/CANCELLATION OF RULEMAKING ACTION:

If an agency wishes to **withdraw an emergency rule** from the rulemaking process at any time after submission to the Governor [step 10] and prior to approval or disapproval by the Governor [step 12], the agency must notify the Governor and the Legislature [see 75:253(K)]. In addition, the agency must notify the OAR by preparing a Notice of Withdrawn Rules [see OAC 655:10-7-33 and Example 7 in *Examples of Document Formats*] and submitting one paper copy and one diskette copy. If the agency published a Notice of Rulemaking Intent [step 3] for the emergency action, the OAR will publish the Notice of Withdrawn Rules in the *Register*. If a Notice of Rulemaking Intent was not published, the OAR will not publish the Notice of Withdrawn Rules; however, it will be retained in the OAR's "official" files.

If an agency wishes to **cancel or continue a comment period or hearing** announced in a published Notice of Rulemaking Intent, the agency should prepare a Notice of Cancelled Hearing or Comment Period [see OAC 655:10-7-27 and Example 3 in *Examples of Document Formats*] or a Notice of Continued Hearing or Comment Period [see OAC 655:10-7-28 and Example 4 in *Examples of Document Formats*] and submit one paper copy and one CD/DVD copy to the OAR.

### DEFINITIONS:

When used in this checklist:

- "**ARR**" means Administrative Rules on Rulemaking [Title 655, Chapter 10 of *The Oklahoma Administrative Code*].
- "**OAC**" or "**Code**" means *The Oklahoma Administrative Code*.
- "**OAR**" means the Secretary of State's Office of Administrative Rules.
- "**Register**" means *The Oklahoma Register*.
- "**Rules**" means any new, amended, revoked, renumbered, or reserved Section and Appendices included in the rulemaking action (rules from more than one Chapter may not be combined in a single "rulemaking action").

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## Checklist for EMERGENCY Rulemaking

### **DRAFTING** [75:253(A)-(B); 75:251; OAC 655:10, Subchapters 3 and 5]

- \_\_\_ 1. Agency determines need for emergency action (i.e., *imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency rule* [75:253(A)]). Agency drafts new, amended, revoked, renumbered, or reserved rule or rules (hereinafter referred to as "rules" or "regulatory text") in same format as is required for later publication of rules in the *Register*. **Proceed to step 2.** [For requirements on formatting regulatory text, see OAC 655:10, Subchapter 3 (relating to numbering and codification), Subchapter 5 (relating to rule drafting), and specifically, 655:10-5-2 through 4 (relating to use of strikeouts and underscoring to identify new, amended, and revoked rules). For examples of new, amended, and revoked rules, see Example 12 in *Examples of Document Formats*.] At this time, agency may also elect to draft the "emergency rule document" required in step 9; however, some parts of the document (such as adoption date, attestation signature/date, etc.) cannot be completed until the rules are adopted in step 8.
- When drafting new rules, note the following:
- If agency has not been assigned a Title number in the Oklahoma Administrative Code, agency must send written request to OAR for assignment of Title number [see OAC 655:10-3-21].
  - If agency is adding a new Chapter in its Title, agency must contact OAR for approval of Chapter number [see OAC 655:10-3-22].
  - If agency is adding new rules (i.e., Sections or Appendices) in an existing Chapter, agency may contact OAR for guidance in locating new rules.

#### **IMPORTANT NOTE ABOUT RULES RELATED TO FEES**

Agencies may not adopt any emergency rule which establishes or increases fees, except during such times as the Legislature is in session, unless specifically mandated by the Legislature or federal legislation, or when the failure to establish or increase fees would conflict with an order issued by a court of law [75:253(G)]. Prior to establishment or increase of a fee, agency must submit written notice of intended action to Governor, Speaker of the House, President Pro Tempore of the Senate, and House Administrative Rules and Agency Oversight Committee. The notice must include justification for the fee or fee increase and all supportive documentation [74:3117].

### **RULEMAKING RECORD** [75:302(B)]

- \_\_\_ 2. Agency opens official rulemaking record [see 75:302(B) for contents]. **Proceed to step 3.**

### **NOTICE OF RULEMAKING INTENT** [optional] [75:253(J)(1); 75:303(A)-(B)]

- \_\_\_ 3. If agency elects to solicit public comment through full compliance with notice requirements [75:303] or through an abbreviated notice and hearing process [75:253(J)(1)], agency prepares Notice of Rulemaking Intent [see OAC 655:10-7-26 and Examples 2A through 2E in *Examples of Document Formats*] and transmittal sheet [see OAC 655:10-7-6 and Example 1 in *Examples of Document Formats*]. Agency submits one paper copy of each and one diskette copy of the Notice to OAR for publication in *Register*, and submits additional paper copies if agency wishes to receive copies stamped "received" and "accepted." **Proceed to step 4.**
- \_\_\_ 4. OAR reviews Notice of Rulemaking Intent for format compliance [OAC 655:10-11-1], and accepts or rejects pursuant to **one of the following:**
- \_\_\_ A. OAR accepts for publication in *Register*. **Proceed to step 5.**
- OR -
- \_\_\_ B. OAR rejects for publication in *Register*. [**Note:** OAR rarely rejects filings. Most problems can be worked out with a phone call to the agency.] OAR returns one copy to agency, along with written explanation. Agency proceeds pursuant to **one of the following:**
- \_\_\_ i. Discontinue proposed rulemaking. [**Note:** Notice of Withdrawn Rules is not required.] **Do NOT proceed; except, agency may return to step 1.**
- OR -
- \_\_\_ ii. **Proceed to step 6** without publishing the optional notice, **then skip to step 8.**
- OR -
- \_\_\_ iii. Revise Notice and **return to step 3.**

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- \_\_\_ 5. Notice of Rulemaking Intent is published in first possible issue of *Register* following acceptance by OAR [see schedule of *Register Publication Dates and Filing Deadlines for All Filings EXCEPT Permanent Rule Documents*, OAC 655:10-9-3, and OAC 655:10-15-1]. OAR sends proof of publication to agency liaison. **Proceed to step 6.**

### ***RULE IMPACT STATEMENT*** **[applicable unless waived by Governor]** [75:253(B)(2); 75:303(D)]

- \_\_\_ 6. Agency issues rule impact statement [see 75:303(D) for required contents] and makes available for public review, *unless such impact statement is, with the prior written consent of the Governor, waived specifically by the agency as unnecessary or contrary to the public interest* [75:253(B)(2)]. **Proceed to step 7.**

**Note:** Rule impact statements are not filed with the OAR, and formatting requirements for rule impact statements are not defined by statute or rule.

### ***PUBLIC COMMENT / HEARING*** **[if applicable]** [75:253(J)(1); 75:303(A)-(B)]

- \_\_\_ 7. Upon completion of optional public hearing and/or comment period, if announced in a published Notice of Rulemaking Intent (step 3), agency proceeds pursuant to **one of the following**:
- \_\_\_ A. If agency receives no written or oral public comment, **proceed to step 8.**  
- OR -
- \_\_\_ B. If agency receives written and/or oral public comment, agency reviews comments and proceeds pursuant to **one of the following**:
- \_\_\_ i. Agency revises proposed rules in response to comments received. **Proceed to step 8.**  
- OR -
- \_\_\_ ii. Agency revises proposed rules in response to comments received, but determines that additional public comment on proposed revisions should be solicited. **Return to step 1 or 3.**  
- OR -
- \_\_\_ iii. Agency does not revise proposed rules in response to comments received, and determines to continue with rules as proposed. **Proceed to step 8.**  
- OR -
- \_\_\_ iv. Agency discontinues rulemaking action. **Do NOT proceed; except, agency may return to step 1.**

### ***ADOPTION*** [75:253(A) and (B)]

- \_\_\_ 8. Agency affirms finding of emergency and adopts rules. **Proceed to step 9.**

### ***EMERGENCY RULE DOCUMENT*** [75:253(B), (E); 75:251(B); 75:254; 75:255(B); OAC 655:10, Subchapter 7, Parts 1 and 3]

- \_\_\_ 9. Agency prepares transmittal sheet and emergency rule document:
- \_\_\_ A. Transmittal sheet [see OAC 655:10-7-6 and Example 1 in *Examples of Document Formats*].  
- AND -
- \_\_\_ B. Emergency rule document [see specific OAC cites for each component below and see Examples 8 and 10 in *Examples of Document Formats*]. Emergency rule document consists of **each of the following**:
- \_\_\_ i. Document heading [OAC 655:10-7-3].  
- AND -
- \_\_\_ ii. Preamble [OAC 655:10-7-11].  
- AND -
- \_\_\_ iii. Summary, IF text of rules is more than 75 pages in length [OAC 655:10-7-12].  
- AND -
- \_\_\_ iv. Enacting clause [OAC 655:10-7-13].  
- AND -

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- \_\_\_ v. Regulatory text [OAC 655:10-7-14], as adopted in step 8. [For requirements and examples on formatting regulatory text, see OAC 655:10, Subchapter 3 (relating to numbering and codification); Subchapter 5 (relating to rule drafting), specifically, OAC 655:10-5-2 thru OAC 655:10-5-4 (relating to use of strikeouts and underscoring; and Example 12 in *Examples of Document Formats*].  
- AND -
- \_\_\_ vi. Attestation [OAC 655:10-7-16]. **Proceed to step 10.**  
**Note:** Prior to OAR's acceptance of agency's attestations, agency must have a letter on file with OAR identifying persons authorized to sign attestations [see OAC 655:10-1-6 and OAC 655:10-7-16].

**SUBMISSION TO GOVERNOR AND LEGISLATURE / RULE IMPACT STATEMENT** [75:253(B); 74:464]

- \_\_\_ 10. ELECTRONIC SUBMISSION TO GOVERNOR, HOUSE, SENATE: Within 10 days after adoption, agency submits **each of the following** to Governor, Speaker of the House of Representatives, and President Pro Tempore of the Senate **via the State Online Filing System** at <https://www.ok.gov/state/filings/logout.php> [74:464]:  
**Note:** Pursuant to 74:464, agencies are required to submit proposed rules electronically to the Governor, Speaker of the House, and President Pro Tempore of the Senate. The State Online Filing System was created as a one-stop filing location for receiving these filings. Each online filing is routed to all three receiving parties (Governor, Speaker, and President ProTemp), as well as to the OAR for conducting the format/numbering review. However, if the agency "determines that [the rules] cannot be filed electronically," the agency can file a "printed copy in lieu of such electronic filing" and "include an explanation of the reason that the document could not be filed electronically." In such instances, the agency must submit two copies of the emergency rule document, transmittal sheet, and rule impact statement to the Governor, two copies to the Speaker, and two copies to the President ProTemp.
  - \_\_\_ A. Emergency rule document and transmittal sheet [step 9].  
- AND -
  - \_\_\_ B. Rule impact statement [step 6].  
- AND -
  - \_\_\_ C. Any supporting documentation (optional), including rule report (optional - see **Note** below).  
**Proceed to step 11.**  
**Note:** The rule report required for permanent rules by 75 O.S., Section 303.1(E) is NOT required for emergency rules. "Provided this shall not be construed to prevent an agency from complying with such requirements at the discretion of the agency." [75:253(J)(2)]
- \_\_\_ 11. ELECTRONIC RETURN RECEIPT: If agency submitted the rules via the State Online Filing System in step 10, agency receives an "electronic return receipt" [74:464], which confirms successful transmission of the rules and provides a record of the file date, in lieu of a received-stamped copy, for the agency's rulemaking record. **Proceed to step 12.**  
**Note:** If the agency was not able to submit the rules electronically in step 10, the agency is advised to obtain a received-stamped copy from the receiving parties for the agency's rulemaking record.

**OAR'S FORMAT REVIEW**  
(**"RED-MARKED PAGES" AND "FORMAT-APPROVED PAGES"**)

When proposed rules are filed with the Governor and Legislature in step 10, the State Online Filing System forwards a copy of the proposed rules to the OAR. The OAR reviews the rules for compliance with the ARR's numbering and formatting requirements, and returns "format approved pages" (FAP's) or "red-marked pages" (RMP's) directly to the agency. Agency retains FAP's or RMP's until emergency rule document is approved by Governor, and makes any corrections noted before filing the approved document with the OAR in step 17 for publication in the Register.

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**AFTER THIS POINT, A NOTICE OF WITHDRAWN RULES IS REQUIRED IF THE AGENCY DISCONTINUES THE RULEMAKING ACTION.**

*If agency discontinues the rulemaking action after the emergency rules are submitted for review in steps 9, 10, and 11 and prior to gubernatorial action in step 12, the agency must submit a Notice of Withdrawn Rules to the OAR [see OAC 655:10-7-33 and Example 7 in Examples of Document Formats]. If an optional Notice of Rulemaking Intent (NRI) was published in steps 3, 4, and 5, the Notice of Withdrawn Rules will be published in the next possible Register issue. If an NRI was not published, the Notice of Withdrawn Rules will not be published in the Register, but will be retained in the OAR's official files [OAC 655:10-7-33(b)].*

### **GUBERNATORIAL ACTION** [75:253(C)-(E)]

- \_\_\_ 12. Governor approves or disapproves proposed rules in their entirety pursuant to **one of the following**:
- \_\_\_ A. Governor approves in writing within 45 calendar days after submission and notifies agency, Legislature, and OAR. **Proceed to step 13.**
- OR -
- \_\_\_ B. Governor disapproves in writing within 45 calendar days after submission and returns entire document to agency with reasons for disapproval. Governor also notifies Legislature and OAR within 15 days after disapproval. **Do NOT proceed to next step; agency may modify rules and return to step 1.**
- OR -
- \_\_\_ C. Governor fails to act within 45 calendar days after submission, resulting in disapproval of rule. Within 15 days after disapproval, Governor notifies Legislature and OAR. **Do NOT proceed to next step; agency may modify rules and return to step 1.**

**AFTER THIS POINT, AGENCY MAY NOT WITHDRAW RULES.**

*After approval or disapproval of emergency rules by the Governor in step 12, agency may no longer withdraw rules. If rules were approved, agency **must proceed to step 13.***

### **PROMULGATION** [75:253(F)(1)]

- \_\_\_ 13. Upon approval by Governor in step 12A, rules are considered promulgated. **Proceed to step 14.**

### **EFFECTIVENESS** [75:253(F)(1)]

- \_\_\_ 14. Rules become effective pursuant to **one of the following**:
- \_\_\_ A. If agency did not specify later effective date in preamble of rule document [step 9Bii], rules are effective immediately upon approval by Governor. **Proceed to step 15.**
- OR -
- \_\_\_ B. If agency specified an effective date in the preamble of the rule document [step 9Bii], and that date is later than the Governor's approval date, rules are effective on the later specified date. **Proceed to step 15.**

### **NOTIFICATION TO AFFECTED PARTIES** [75:304(B)(2)(b)]

- \_\_\_ 15. Upon receipt of Governor's written approval of rules [step 12A], *agency shall take appropriate measures to make emergency rules known to the persons who may be affected by them* [75:304(B)(2)(b)]. **Proceed to step 16.**

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### **PUBLICATION** [75:253(E)]

- \_\_\_ 16. Upon receipt of Governor's written approval of rules [step 12A], agency submits **each of the following** to the OAR:
- \_\_\_ A. Two paper copies of **each of the following**:
- Note:** Agency submits additional paper copies if it wishes to receive copies stamped "received" and "accepted."
- \_\_\_ i. Governor's written approval.
- AND -
- \_\_\_ ii. Emergency rule document [see step 9B] (including signed attestation). With the exception of changes necessary to bring the rules into compliance with provisions of the ARR [75:253(B)(1) and 251(B)(2)(i)], as were identified in "red-marked pages" returned to the agency during or after the Governor's review [see "OAR's Format Review" below step 11], or as otherwise identified by the OAR, the text of the rules submitted for publication must be the same as that submitted to the Governor and the Legislature.
- AND -
- \_\_\_ B. The "Red-marked pages" or "Format approved pages" returned to agency during or after Governor's review [see "OAR's Format Review" below step 11].
- Note:** The agency should retain a copy of the "red-marked pages" or "format-approved pages" for the rulemaking record [see step 2 and 75:302(B) for information about the "rulemaking record."
- AND -
- \_\_\_ C. One CD/DVD copy of emergency rule document (without attestation). **Proceed to step 17.**
- \_\_\_ 17. Emergency rule document is published in first possible issue of *Register* following submission by agency in step 16 [see schedule of *Register Publication Dates and Filing Deadlines for All Filings EXCEPT Permanent Rule Documents*, OAC 655:10-9-3, and OAC 655:10-15-1]. OAR sends proof of publication to agency liaison. **Proceed to step 18.**

### **INITIATION OF PERMANENT RULEMAKING** [if applicable] [75:253(H)(1)]

- \_\_\_ 18. If emergency rules are *of a continuing nature*, the agency . . . initiate[s] proceedings for promulgation of . . . permanent rule[s] [75:253(H)(1)] to supersede emergency rules [see *Checklist for Permanent Rulemaking*]. **Proceed to step 19.**

### **EXPIRATION OR TERMINATION** [75:253(F) and (H)]

- \_\_\_ 19. Emergency rules remain effective pursuant to **one of the following**:
- \_\_\_ A. Rules are effective **through September 14** following sine die adjournment of next regular legislative session **OR** until the **earliest** occurrence of **one of the following**:
- \_\_\_ i. Rules are superseded by another rule(s);
- Note:** If an emergency rule is superseded by another emergency rule, "the latter emergency rule retain[s] the same expiration date as the superseded emergency rule, unless otherwise authorized by the Legislature" [75:253(H)(1)].
- OR -
- \_\_\_ ii. Rules are disapproved by Legislature;
- OR -
- \_\_\_ iii. Any adopted permanent rule(s) based on the emergency rules are disapproved by Legislature [75:253(H)(2)(c)].
- OR -
- \_\_\_ B. Rules are effective **through a date preceding September 14** following sine die adjournment of next regular legislative session, if specified by agency in preamble of emergency rule document [step 9Bii], **OR** until the **earliest** occurrence of **one of the following**:

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- i. Rules are superseded by another rule(s);  
*Note: If an emergency rule is superseded by another emergency rule, "the latter emergency rule retain[s] the same expiration date as the superseded emergency rule, unless otherwise authorized by the Legislature" [75:253(H)(1)].*  
- OR -
- ii. Rules are disapproved by Legislature;  
- OR -
- iii. Any adopted permanent rule(s) based on the emergency rules are disapproved by Legislature [75:253(H)(2)(c)].