

# FAQ'S

## QUESTIONS FREQUENTLY ASKED BY REGULATORY AGENCIES

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1. **What do we do if we haven't received the "red-marked" pages (RMP's) or "format-approved" pages (FAP's) from the OAR by the time we have received written notification of approval of emergency rules from the Governor? And, will a delay in filing and publishing the approved emergency rules affect the effectiveness of the rules?**

An emergency rule document should not be filed with the OAR until the agency has received both the written approval from the Governor AND the RMP's or FAP's from the OAR. If you have received the Governor's written approval but have not yet received RMP's or FAP's, contact the OAR about the status of the RMP's/FAP's. Although it is critical that emergency rules be published as quickly as possible after approval by the Governor, the delay will not affect the effectiveness of the rules. Emergency rules are effective immediately upon approval by the Governor or on a later date specified by the agency in the emergency rule document --- so, the publication date does not play any role in determining the effective date of emergency rules, as it does with permanent rules.

2. **When we receive "red-marked" pages, do we need to send the corrections to the Governor and the Legislature, as well as to the OAR?**

No . . . Unless the Governor or Legislature has specifically requested a corrected copy, neither the "red-marked" pages nor the corrected document are returned to the Governor or the Legislature. *If the rules are emergency rules*, return the RMP's to the OAR when you file the emergency rule document with the OAR after the Governor's approval. *If the rules are permanent rules*, return the RMP's to the OAR when you file the permanent rule document after the rules become finally adopted.

3. **If we need to withdraw a rule from the rulemaking process, do we have to withdraw the entire document?**

No, you're not required to withdraw the entire document, but it is much "cleaner" for everyone involved if the entire document is withdrawn. Note, however, that although individual rules (Sections, Appendices) may be withdrawn, portions of a rule (i.e., subdivisions of a section) may not be withdrawn.

4. **When counting time periods required by the rulemaking process do we count calendar days or working days?**

All time periods prescribed or allowed by the APA are based on calendar days. However, when the last day of a required calendar-day time period falls on a weekend or holiday, the time period is extended to the next working day (see also #6); EXCEPT, permanent rules can become effective on the tenth day following publication in the *Register*, regardless of whether the tenth day falls on a weekend or holiday. [75:250.8]

5. **How do we count calendar days?**

First, don't count the day of the action or event from which the time period begins to run. And, second, count every day following that, including weekends and holidays. Except when calculating effective dates of permanent rules (see also #4), however, if the last day of the time period falls on a weekend, a legal holiday, or a day on which the receiving office closes before 4:00 p.m., extend the time period to the next working day or the next day that the receiving office does not close before 4:00 p.m. [75:250.8].

**6. When does "final adoption" actually occur?**

The rules are considered finally adopted when the Governor signs the Legislature's joint or omnibus resolution approving the rules – or when both houses of the Legislature have voted to override a veto of the resolution. If an agency believes that rules disapproved by an omnibus resolution should be approved, the agency may petition the Governor to issue a Governor's Declaration declaring those rules to be approved and finally adopted. If the Legislature fails to pass an omnibus resolution prior to the end of any legislative session, the Governor may issue a Governor's Declaration declaring all proposed permanent rules approved and finally adopted.

**7. Do permanent rules have to be the same as the emergency rules they are superseding?**

No . . . the **text** of permanent rules does not have to be the same as the **text** of the emergency rules. However, there are some restrictions regarding the use of section numbers. Section numbers and topics that were assigned to new emergency rules must either be retained in the permanent rules or allowed to expire. If a section number added in the emergency rules is no longer needed in the permanent rules, the section number may not be re-used for a different topic. Additional new sections may be added in the permanent action - but they must be added at unused section numbers.

**8. How is the expiration date of an emergency action determined?**

If an emergency action is effective on or before the first day of a legislative session,\* the rule can be effective through September 14 following that legislative session. If the emergency action becomes effective after the first day of session,\* it can be effective through September 14 following the next year's legislative session . . . **unless** the agency has stated an earlier expiration date in the preamble of the emergency rule document.

\* **Note:** In 2001, the AG issued a formal opinion on how to count the Legislature's single "organizational day" in January in odd-numbered years. AG Opinion 01-8 clarifies that the single day in January is a "legislative day" and should be considered the first day of session for purposes of determining how long emergency rules can be effective.

Also, if an emergency rule is superseded by another emergency rule before being superseded by a permanent rule, the later emergency action takes on the expiration date of the earlier action.

**9. Can an emergency rule be amended?**

Technically, an emergency rule is never "amended" --- however, it can be superseded by another emergency action or a permanent action which includes the desired changes and which, therefore, effectively amends the prior emergency action.\* The text of the later emergency or permanent action must be prepared as an amendment to the last promulgated permanent text of the rule, not as an amendment to the emergency rule text --- OR, if no previous permanent rule existed (i.e., if the prior emergency rule was a new rule), the later action is prepared as a new rule (at the same number), even if the language is now different.

\* **Note:** It is important to note that, pursuant to 75 O.S., Section 253(H)(1), when an emergency action is superseded by a later emergency action, the later action takes on the expiration date of the earlier action.

**10. What happens if an emergency rule expires without being superseded by a permanent rule, or expires prior to the effective date of the permanent rule that was intended to supersede it?**

Emergency rules are effective through September 14 following sine die adjournment of the next legislative session,\* unless superseded by another rule or disapproved by the Legislature, or unless an earlier expiration date was specified by the agency in the emergency rule document.

- (a) If an emergency rule expires without being superseded by a permanent rule, one of the following occurs:
  - (i) If the emergency rule was an amended or revoked rule, on September 15 the text of the rule reverts back to the text as it existed prior to the emergency action(s).
  - (ii) If the emergency rule was a new rule, the rule is no longer effective after September 14.
- (b) If an emergency rule expires prior to the effective date of the permanent rule that was intended to supersede it, one of the following occurs:
  - (i) If the emergency rule was an amended or revoked rule, on September 15 the text of the rule reverts back to the text as it existed prior to the emergency action(s), and the prior text remains in effect until the permanent rule becomes effective.
  - (ii) If the emergency rule was a new rule, the rule is not effective from September 15 until the date the permanent rule becomes effective.

\* **Note:** If an emergency rule is effective on the first day of a legislative session (i.e., if it becomes effective on or before the first day of the session), it can only be effective through September 14 of that year. If it is not effective on the first day of the session (i.e., if it becomes effective AFTER the first day of the session), it can be effective through September 14 following the next year's legislative session (unless stated otherwise in the preamble of the emergency rule document).

**11. If the Legislature disapproves a permanent rule and the permanent rule would have superseded an emergency rule, what happens to the emergency rule?**

When the Legislature disapproves a permanent rule, any emergency rule upon which the permanent rule was based is also considered to be disapproved. If this occurs, the agency must file the Notice of Legislative Disapproval as quickly as possible, and include a note alerting the OAR that emergency rules have been terminated as a result of the disapproval.

**12. How do we add a new section between two existing sections?**

Use decimal-point numbering [see ARR 655:10-3-28]. For example, to add new sections between 100:15-7-5 and 100:15-7-6, use 100:15-7-5.1, 100:15-7-5.2, etc. DO NOT RENUMBER the sections - the topic of a section cannot be changed (except to expand or narrow the topic).

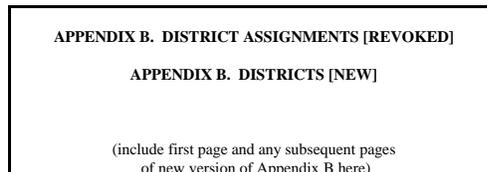
**13. When revoking a section, should we renumber the subsequent sections?**

No . . . It's critical that you DO NOT renumber the subsequent sections. The number and tagline of the revoked section, as well as the source note, are a permanent record in the *Code*, and provide cites to the *Register* publication of the revocation action, as well as any prior actions on that section.

**14. How do we amend an Appendix, since Appendices are image files that can't be amended with strikeouts and underscoring?**

Appendices are amended by "revocation and reenactment" --- i.e., by revoking the existing Appendix and simultaneously reenacting a new version of the Appendix at the same location. To prepare a revoked and reenacted Appendix, add the word [REVOKED] after the existing Appendix heading --- do not include the actual content/text of the existing Appendix. Then, on a new line below the existing Appendix heading, type the designation/heading of the new version of the Appendix (even if identical to the heading of the existing version), followed by the word [NEW]. Below these headings, include the content of the new version of the Appendix. Each page of each Appendix must be scanned by the OAR and stored as an image rather than as text - so, strikeouts and underscoring cannot be used.

*For example, to revoke an existing Appendix B (entitled DISTRICT ASSIGNMENTS) and reenact a new version of the Appendix (entitled DISTRICTS):*



**15. Can a section be "revoked and reenacted"?**

No, a section cannot be "revoked and reenacted" - a section can only be "amended" by using strikeouts and underscoring. "Revocation and reenactment" is used only for amending Appendices.

**16. How many copies of a filing must we submit to the OAR?**

- (a) For notice documents being filed for publication with the OAR, submit one paper copy and one copy saved to a CD or thumb drive of the filing. Bring a second copy if you want a "received-stamped" file copy for your records. Bring a third copy if you would like the OAR to return an "accepted-stamped" file copy to you after the filing is reviewed and accepted.
- (b) For emergency, preemptive, and permanent rule documents being filed for publication with the OAR, submit two paper copies of the filing and one copy saved to a CD or thumb drive. Bring a third copy if you want a "received-stamped" file copy for your records. Bring a fourth copy if you would like the OAR to return an "accepted-stamped" file copy to you after the filing is reviewed and accepted.

**17. Can we include more than one filing on the same CD or thumb drive?**

Yes, you may include all rulemaking filings on the same CD/thumb drive.