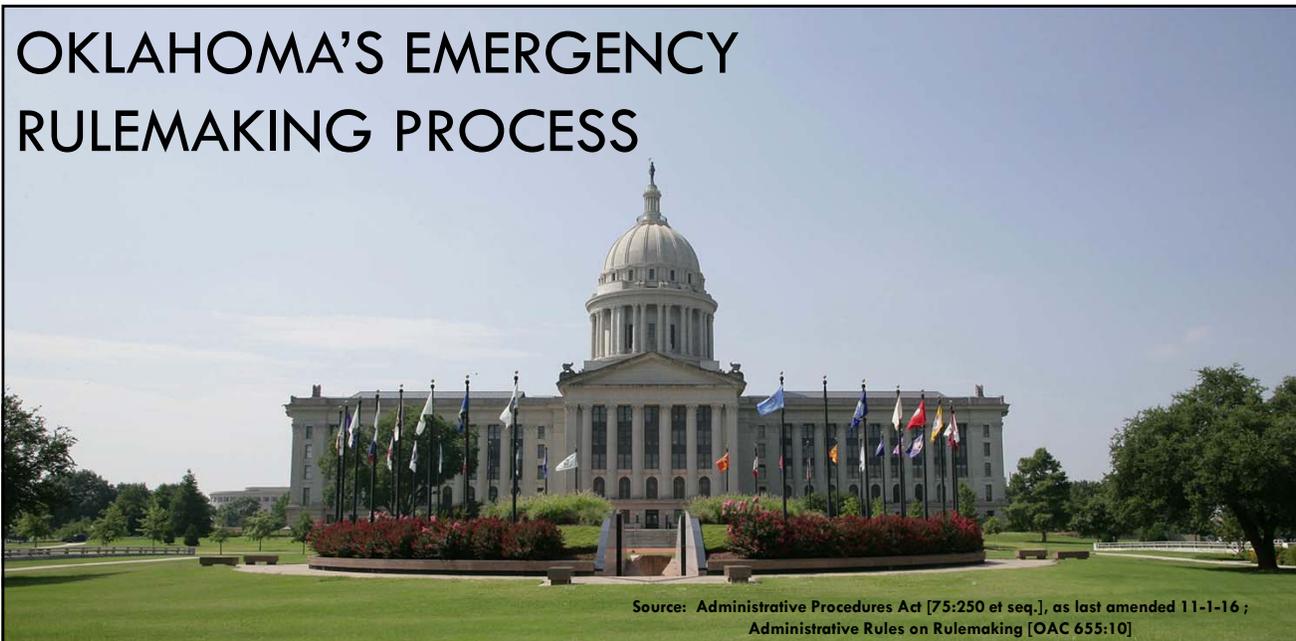


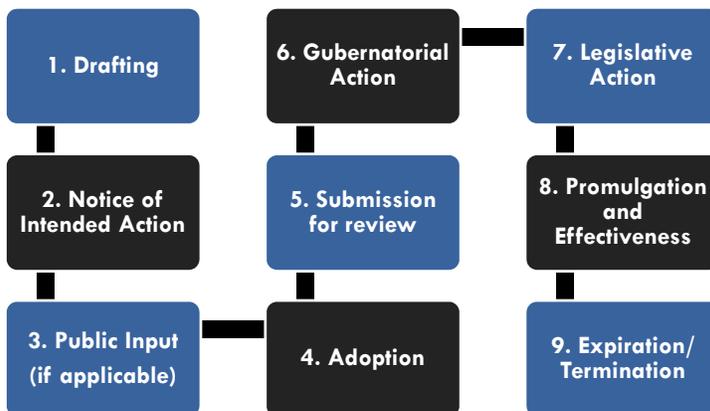
# OKLAHOMA'S EMERGENCY RULEMAKING PROCESS



11/1/2016

An Overview for Oklahoma's Regulatory Agencies

## Emergency Rulemaking Process – At a Glance



## 1. Drafting

**NOTE:** 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]

- As directed or authorized by statute, agency determines need for new rules or revisions to existing rules, and finds that the rules are “*necessary as an emergency measure to do any of the following:*
  - ✓ *Protect the public health, safety or welfare;*
  - ✓ *Comply with deadlines in amendments to an agency’s governing law or federal programs;*
  - ✓ *Avoid violation of federal law or regulation or other state law;*
  - ✓ *Avoid imminent reduction to the agency’s budget; OR*
  - ✓ *Avoid serious prejudice to the public interest.”* [75:253(A)(1)]

## 1. Drafting – Cont’d

- Agency drafts proposed rules pursuant to numbering and format requirements in SOS's rules, using underscoring and strikeouts to identify new and deleted language.
- Agency prepares **Rule Impact Statement (RIS)**, unless requirement is waived by agency with written consent of Governor.

PART 7. REGULATORY TEXT

655:10-3-36. Drafting regulatory text; designating text; complete sentences  
 (a) Regulatory text shall be drafted pursuant to this Section and the rule drafting requirements of Subchapter 5 of this Chapter.  
 (b) All regulatory text must be designated within Sections or Appendices. Within Sections, text must be designated using subdivision numbers and letters, as set forth in 655:10-3-25, except when using an implied (a), as described in 655:10-3-26. Text may not be “floated” or undesignated. For example, an undesignated block of text that starts on a new line following other text in a given subdivision or following an enumeration is “floating” text, and may not be left undesignated.  
 (c) Every Section must begin with a complete sentence, or begin a sentence which is completed in its subdivisions.

PART 9. MISCELLANEOUS CODIFICATION REQUIREMENTS

655:10-3-49. Internal cross references [AMENDED AND RENUMBERED TO 655:10-5-12.1]  
 A rule frequently refers to itself or its subdivisions, or to other rules in the Code. These internal cross references shall be formatted pursuant to this subsection.  
 (1) Ambiguous references. Code citations within rules should be specific. Ambiguous references, such as “these rules,” “herein,” “above,” and “below,” may not be used in rules. The agency must use more specific terms such as “this Chapter” or “this Part,” or the full CAC citation.

## 2. Notice of Intended Action

### Optional Notice of Rulemaking Intent:

- Agency **may** file Notice of Rulemaking Intent (NRI) with Office of Administrative Rules (OAR). OAR reviews, accepts, and publishes NRI in *Register*.

NRI summarizes proposed rules, identifies authority and need for emergency action, announces **full 30-day or abbreviated comment period** and/or date of hearing, identifies where copies of proposed rules and RIS may be obtained, and requests comments from business entities (if proposed rules impact small business).

### Notice of Fees/Fee Increase:

- If rules establish or increase fees, agency notifies Governor, Speaker, President Pro Tempore, and House Administrative Rule Review Committee of the intended action via State Online Filing System, and includes justification and supportive documentation.

## 3. Public Input (if applicable)

- If NRI was published and full or abbreviated comment period was announced in NRI, agency conducts **comment period**.
- If NRI was published and public hearing was announced in NRI, agency conducts **public hearing**.



## 4. Adoption

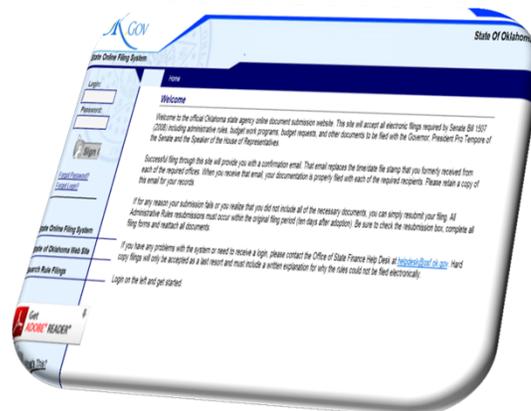
- If an NRI was published and comments were received at comment period/public hearing, agency considers comments and determines if changes to proposed rules are needed.
- Agency adopts rules, with or without changes.



## 5. Submission for Review

\* "Political subdivision" is defined as "a county, city, incorporated town or school district" [75:250.3(15)]

- Within 10 calendar days after adoption, agency submits adopted rules and Rule Impact Statement (unless waived in writing by Governor) to:
  - ✓ Governor and Legislature via State Online Filing System, and System forwards filing to OAR.
  - AND -
  - ✓ Advisory Committee on Intergovernmental Relations, if rules impact political subdivisions.\*

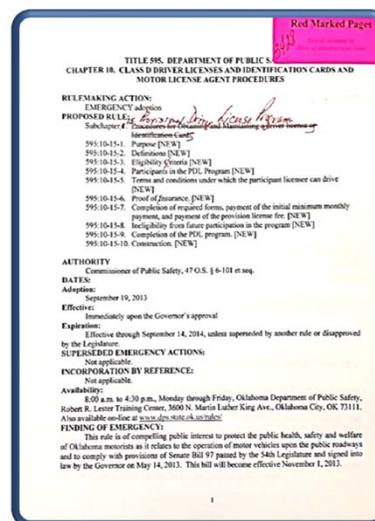


State Online Filing System  
[https://www.ok.gov/state/filings/state\\_filing.php](https://www.ok.gov/state/filings/state_filing.php)

## 5. Submission for Review – Cont'd

- OAR reviews and returns "red-marked pages" (RMP's) or "format-approved pages" (FAP's) directly to agency.

**NOTE:** If agency receives RMP's from OAR, agency makes corrections before submitting EME to OAR for Register publication following gubernatorial approval of rules.



## 7. Gubernatorial Action

- Within 45 calendar days after EME is filed with Governor, Governor approves or disapproves proposed rules in their entirety, pursuant to **one of the following**:
  - ✓ Governor approves in writing and notifies agency, Legislature, and OAR.
    - OR -
  - ✓ Governor disapproves in writing and returns entire document to agency, with reasons for disapproval. Governor notifies Legislature and OAR within 15 days after disapproval.
    - OR -
  - ✓ Governor does not approve within 45 calendar days, resulting in disapproval.



## 7. Gubernatorial Action – Cont'd

### EVALUATION OF EMERGENCY RULES SUBMITTED TO THE OFFICE OF THE GOVERNOR

- Requirements of 75 O.S. § 253
  - “Substantial evidence” that the rule is necessary as an emergency measure to
    - Protect the public health, safety or welfare
    - Comply with deadlines in amendments to an agency’s governing law or federal programs
    - Avoid violation of federal law or regulation or other state law
    - Avoid imminent reduction to the agency’s budget
    - Avoid serious prejudice to the public interest

## 7. Gubernatorial Action – Cont'd

### EVALUATION OF EMERGENCY RULES SUBMITTED TO THE OFFICE OF THE GOVERNOR – Cont'd

- Within the power of the agency to make and within the enacted legislative standards
- Made in compliance with the requirements of the Administrative Procedures Act
- **NO new or increased fees**, unless specifically mandated by law (state or federal legislation or court order)
- **Abbreviated notice and hearing process, if appropriate**
- Consistent with the Oklahoma legislation that precipitated the rulemaking
- Substantive typos

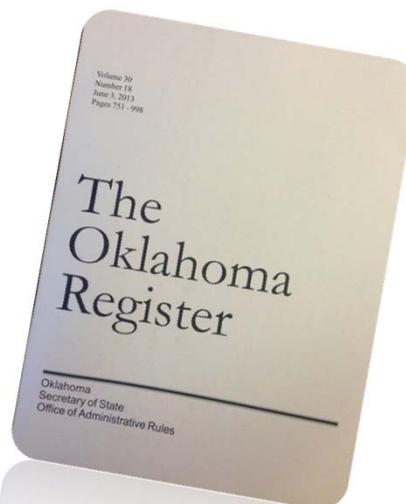
## 8. Legislative Action

- Although legislative approval is not required, the Legislature may disapprove rules at any time by joint resolution.



## 9. Promulgation and Effectiveness

- Rules are considered **promulgated** immediately upon approval by Governor.
- Rules are **effective** immediately upon approval by Governor, UNLESS a later effective date was specified by agency in approved EME.
- Upon receipt of written approval from Governor, as well as RMP's or FAP's from OAR, agency submits the **approved EME**, the **RMP's or FAP's**, and a **copy of the Governor's written approval** to OAR. OAR reviews, accepts, and publishes EME in *Register*.



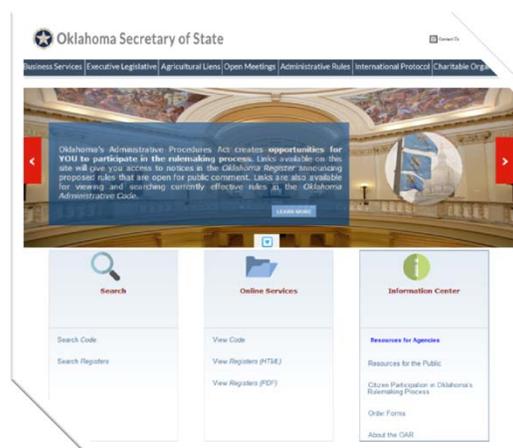
## 10. Expiration/Termination

- An emergency rule will be effective through September 14 following the next regular legislative session (or through an earlier expiration date specified by the agency in the EME), UNLESS:
  - ✓ the emergency rule has already been superseded by a permanent rule or another emergency rule [However, if an emergency rule is superseded by another **emergency** rule, the later emergency rule retains the same expiration date as the superseded emergency rule.]
    - OR -
  - ✓ the emergency rule has been terminated due to:
    - ❖ legislative disapproval of the emergency rule by joint resolution
      - OR -
    - ❖ legislative disapproval by joint resolution of any proposed permanent rule that was intended to supersede the emergency rule

## Comments or Questions

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**OAR Website:**

**<https://www.sos.ok.gov/oar/default.aspx>**