

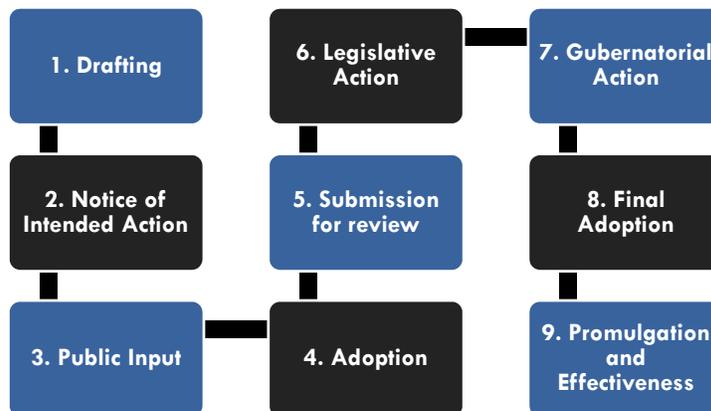
OKLAHOMA'S PERMANENT RULEMAKING PROCESS



12/7/2015

An Overview for Oklahoma's Regulatory Agencies

Permanent Rulemaking Process – At a Glance



1. Drafting

Agencies may NOT "establish or increase 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" [74:3117].

- As directed or authorized by statute, agency determines need for new rules or revisions to existing rules.
- Agency drafts proposed rules pursuant to numbering and format requirements in SOS's rules, using underscoring and strikeouts to identify new and deleted language.

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.~~

(i) ~~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 OAC citation.~~

2. Notice of Intended Action

Notice of Rulemaking Intent:

- Agency files Notice of Rulemaking Intent (NRI) with Office of Administrative Rules (OAR).
- OAR reviews, accepts, and publishes NRI in *Oklahoma Register*, which is published semi-monthly.

NRI includes:

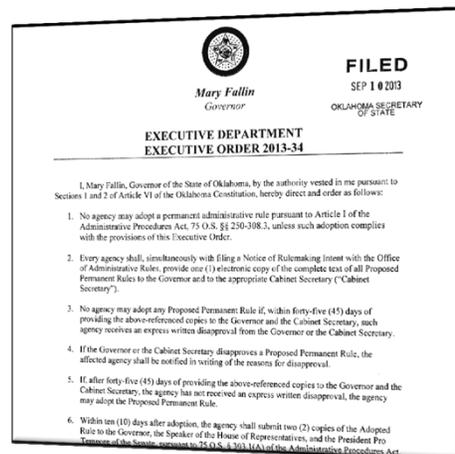
- ✓ Summary of proposed rules, need, intended effect, and legal authority
- ✓ Dates of a minimum 30-day comment period, and how/where public can submit comments
- ✓ Date, time, and location of a public hearing, scheduled for at least 30 days after NRI's publication - OR, if no hearing is scheduled, how and where persons can demand hearing
- ✓ How to obtain copies of proposed rules
- ✓ When the Rule Impact Statement (RIS) will be available, and how to obtain copies - RIS must be prepared and available within 15 days after NRI published, unless RIS requirement waived in writing by Governor
- ✓ Request for input from business entities, if business entities will be affected by proposed rules

2. Notice of Intended Action – Cont'd

Notice to Governor/Cabinet Secretary:

- As required by EO 2013-34, “simultaneously with filing a Notice of Rulemaking Intent with the [OAR],” agency emails copy of proposed rules to Governor and agency’s Cabinet Secretary. [See EO 2015-07 for Cabinet assignments]

NOTE: If agency receives written disapproval from Governor or Cabinet Secretary within 45 days after emailing proposed rules to them, agency may NOT proceed with adoption of the proposed rules.



2. Notice of Intended Action – Cont'd

Additional notifications:

- If rules establish or increase fees, agency notifies Governor, Speaker, President Pro Tempore, and House Administrative Rules Review Committee of intended action via State Online Filing System.
- Within 3 days after publication of NRI, agency makes NRI and RIS available to persons who have made timely request for advance notice of agency’s proposed actions, as follows:
 - ✓ Agency mails copies of NRI and RIS, if available, to interested parties.
- AND/OR -
 - ✓ Agency electronically notifies interested persons that proposed rules and RIS, if available, may be viewed on agency’s website.
- Within 15 days after publication, by date announced in NRI, agency prepares RIS and makes available to public upon request.

3. Public Input

- **Comment period** – Agency conducts comment period (minimum of 30 days), as announced in NRI.
- **Public hearing** –
 - If hearing was announced in NRI, agency conducts public hearing.
 - If no hearing was announced in NRI, and if hearing is demanded by qualifying party(ies)*, agency must publish a new NRI announcing hearing that is scheduled for at least 30 days after new NRI will be published.



- * Qualifying parties are identified in 75:303(C)(1):
- ✓ At least ten persons,
 - ✓ A political subdivision,
 - ✓ An agency, OR
 - ✓ An association having not less than 25 members

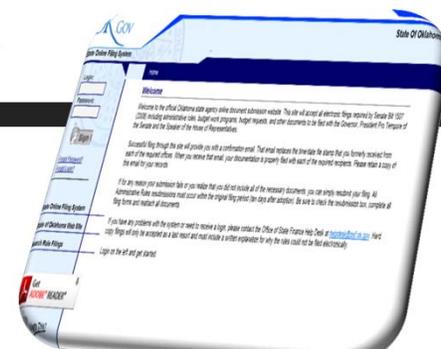
4. Adoption

NOTE: AFTER ADOPTION, A NOTICE OF WITHDRAWN RULES MUST BE PUBLISHED IF THE AGENCY DISCONTINUES THE RULEMAKING ACTION --- If agency discontinues a rulemaking action after adoption and prior to final adoption, agency notifies Governor and Legislature via State Online Filing System, and submits Notice of Withdrawn Rules to OAR for publication in Register.

- Agency considers public comments and proceeds pursuant to **one of the following:**
 - ✓ Agency adopts rules as proposed (i.e., without revision).
- OR -
 - ✓ Agency revises rules in response to public comments and adopts rules as revised.
- OR -
 - ✓ Agency determines that additional public comment should be solicited, and publishes new NRI announcing hearing scheduled for at least 30 days after publication of new NRI.

5. Submission for Review

- Within 10 calendar days after adoption, agency submits adopted rules and Agency Rule Report* (including RIS) to:
 - ✓ Governor, Legislature, and OAR via State Online Filing System.
 - AND -
 - ✓ Advisory Committee on Intergovernmental Relations, if rules impact a political subdivision - i.e., “a county, city, incorporated town or school district” [75:250.3(15)].



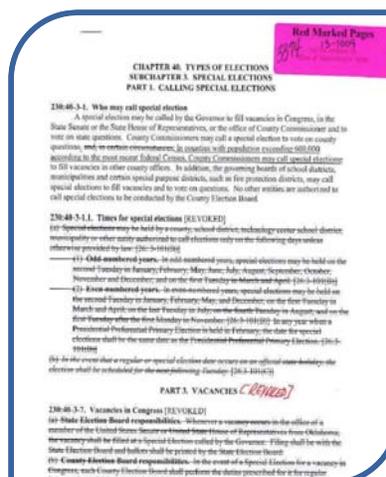
State Online Filing System
<https://www.ok.gov/state/filings>

* 75:303(E) sets out 15 items to be addressed by an agency in the Agency Rule Report, such as a summary of the proposed rules, identification of the agency's statutory authority for adopting the rules, and a "summary of comments received and explanation of changes or lack of any change made" as a result of those comments.

5. Submission for Review – Cont'd

- Agency files Statement of Submission for Review (SR) with OAR. OAR reviews, accepts, and publishes SR in *Register*.
- OAR reviews adopted rules 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 later use when preparing "finally adopted" rules for publication in *Register*.



6. Legislative Action

Legislative Review Period:

- If rules are received by Legislature **on or before April 1**, the Legislature has until the last day of the *current* regular session to review rules.
- If rules are received by Legislature **after April 1**, the Legislature has until the last day of the *next* regular session to review rules.



6. Legislative Action – Cont'd

Options for Legislative Action:

- Approve or disapprove rules, in whole or in part, by omnibus joint resolution* during legislative review period
- OR -
- Approve or disapprove rules, in whole or in part, by joint resolution during legislative review period
- OR -
- Approve rules by overriding Governor's veto of a joint or omnibus joint resolution approving the rules
- OR -
- Disapprove rules by overriding Governor's veto of a joint or omnibus joint resolution disapproving the rules

* 75:308.3 directs the Legislature to "have an omnibus joint resolution prepared for consideration each session . . . in the following form: 'All proposed permanent rules of Oklahoma state agencies filed on or before April 1 are hereby approved except for the following:'"

7. Gubernatorial Action



Options for Gubernatorial Action:

- Sign joint or omnibus joint resolution approving/disapproving rules
- OR -
- Veto joint resolution approving/disapproving rules
- OR -
- Veto omnibus joint resolution approving/disapproving rules
- OR -
- Issue Governor's Declaration approving rules (must be published in Register by July 17)

Governor's Declaration:

- If an agency believes that a rule disapproved by omnibus resolution should be approved and finally adopted, the agency may seek a **Governor's Declaration** approving the rule.
- If the Legislature fails to pass an omnibus resolution or the resolution is found to have a technical legal defect, the Governor may issue a **Governor's Declaration** declaring rules to be approved and finally adopted.
[75:308.3(D)]

7. Gubernatorial Action – Cont'd

Pursuant to Section 11 of Article 6 of the Oklahoma Constitution, in order to become law, every bill that has passed the Senate and the House of Representatives must be presented to the Governor for approval.

- ❑ **For all bills OTHER THAN those passed on the date of adjournment ("sine die"), the Governor has five (5) days to sign or veto the bill, excepting Sundays.** If the Governor does not take action within these five (5) days, the bill becomes law.
- ❑ **For all bills passed on sine die, the Governor has fifteen (15) days to sign or veto the bill.** If the Governor does not take action within these fifteen (15) days, the bill does NOT become law (otherwise known as a "pocket veto").

7. Gubernatorial Action – Cont'd

§ 11. Approval or veto of bills - Passage over veto - Failure to return bill.

Every bill which shall have passed the Senate and House of Representatives, and every resolution requiring the assent of both branches of the Legislature, shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it; if not, he shall return it with his objections to the house in which it shall have originated, who shall enter the objections at large in the Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill or joint resolution, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and, if approved by two-thirds of the members elected to that house, it shall become a law, notwithstanding the objections of the Governor. In all such cases, the vote in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the Journal of each house respectively. If any bill or resolution shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the Governor. No bill shall become a law after the final adjournment of the Legislature, unless approved by the Governor within fifteen days after such adjournment.

7. Gubernatorial Action – Cont'd

TIMELINE FOR A GUBERNATORIAL DECLARATION PURSUANT TO 75 O.S. § 308.3

- Publication on or before July 17, meaning that any declaration must be executed by the Governor and forwarded to OAR to meet the submission deadline for the mid-July publication (around June 25)

TAKEAWAY—

COORDINATE EARLY AND OFTEN WITH THE OFFICE OF THE GOVERNOR AND THE APPROPRIATE CABINET SECRETARY.

See Executive Order 2015-07 for Cabinet assignments.

8. Final Adoption

A permanent rule is deemed **“finally adopted”** if:

- ✓ Approved by joint resolution during applicable legislative review period, provided that resolution is signed by Governor or Governor’s veto is overridden by Legislature
- OR -
- ✓ Approved (i.e., not disapproved) by omnibus joint resolution during applicable legislative review period, provided that resolution is signed by Governor or Governor’s veto is overridden by Legislature
- OR -
- ✓ Disapproved by joint resolution or omnibus joint resolution during applicable legislative review period, but resolution is vetoed by Governor and veto is NOT overridden by Legislature, resulting in approval
- OR -

8. Final Adoption – Cont’d

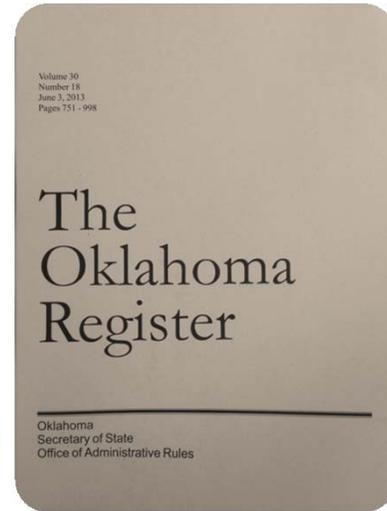
After final adoption, rules may no longer be withdrawn from the rulemaking process.

A permanent rule is deemed **“finally adopted”** if – Cont’d:

- ✓ Approved by Governor’s Declaration after Legislature adjourns sine die without passing an omnibus joint resolution
- OR -
- ✓ Disapproved by omnibus joint resolution during applicable legislative review period, but subsequently approved by Governor’s Declaration [Pursuant to 75:308.3(D), if agency believes disapproved rule should be approved and finally adopted, agency may submit petition to Governor stating need for rule and citing authority to promulgate rule.]
- OR -
- ✓ Approved by Governor’s Declaration after a finding by Governor that omnibus resolution has “technical legal defect preventing approval of administrative rules intended to be approved by the Legislature” [75:308.3(D)(4)].

9. Promulgation and Effectiveness

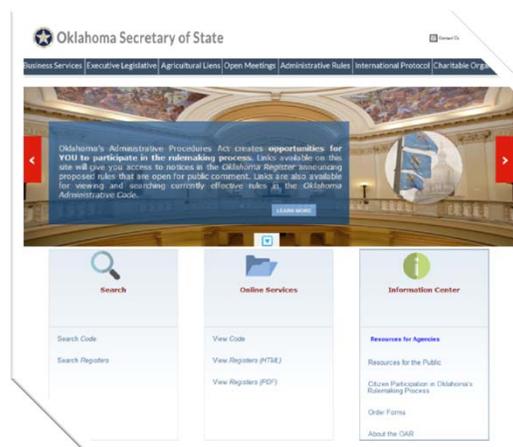
- Within 30 calendar days after rules become finally adopted, agency submits finally adopted rules in a **Permanent Rule Document (PER)** to OAR, along with RMP's or FAP's. OAR reviews, accepts, and publishes PER in *Register*.
- Upon publication in *Register*, rules are considered **promulgated**.
- Rules are **effective** on date specified by agency in PER. Effective date must be at least 10 days after scheduled publication date of PER.



Comments or Questions

Peggy Coe
Office of Administrative Rules
Secretary of State
Phone: (405) 521- 4911
Email: peggy.coe@sos.ok.gov

Maria Maule
Office of the Governor
Phone: (405) 522-8821
Email:
maria.maule@gov.ok.gov
generalcounsel@gov.ok.gov



OAR Website:

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