

Volume 20
Number 3
December 2, 2002
Pages 31 - 120

The Oklahoma Register

Oklahoma
Secretary of State
Office of Administrative Rules



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INFORMATION ABOUT THIS PUBLICATION may be obtained by contacting the Oklahoma Secretary of State, Office of Administrative Rules, 2401 North Lincoln Boulevard, 220 Will Rogers Building, 2nd Floor North, P.O. Box 53390, Oklahoma City, Oklahoma 73152-3390, or by calling (405) 521-4911. Office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.

This publication is issued and printed by the Secretary of State as authorized by 75 O.S., Section 255. 149 copies have been prepared and distributed at a cost of \$584.20. Copies have been deposited with the Oklahoma Department of Libraries, Publications Clearinghouse.

ISSN 0030-1728

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Notices of Rulemaking Intent

Prior to adoption and gubernatorial/legislative review of a proposed PERMANENT rulemaking action, an agency must publish a Notice of Rulemaking Intent in the *Register*. In addition, an agency may publish a Notice of Rulemaking Intent in the *Register* prior to adoption of a proposed EMERGENCY or PREEMPTIVE rulemaking action.

A Notice of Rulemaking Intent announces a comment period, or a comment period and public hearing, and provides other information about the intended rulemaking action as required by law, including where copies of proposed rules may be obtained.

For additional information on Notices of Rulemaking Intent, see 75 O.S., Section 303.

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 2. FEES

[OAR Docket #02-1429]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Fee Schedules
35:2-3-6 [REVOKED]
35:2-3-7 [REVOKED]
35:2-3-12 through 35:2-3-14 [AMENDED]
35:2-3-16 [AMENDED]
35:2-3-18 [AMENDED]
35:2-3-22 [AMENDED]
35:2-3-26 [AMENDED]

SUMMARY:

These amendments shall assist in providing information about fees and fee schedules, provide clarification of fee requirements, replace obsolete terms and language in existing rules, and ensure that the rules are in agreement with the current statutes.

AUTHORITY:

Title 2 O.S. 2001, §§ 2-4(2), 2-4 (20), 10-79, 3-32.2, 3.32.7, 3-85, 8-77.5, 8-77.7, 8-85.10, 8-26, 3-101; Oklahoma State Board of Agriculture

COMMENT PERIOD:

Persons may submit written and oral comments to Janet Stewart at 2800 North Lincoln Boulevard, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from December 2, 2002 through January 2, 2003.

PUBLIC HEARING:

A public hearing will be held at 10:30 a.m., January 2, 2003 in the Board Room of the Oklahoma Department of Agriculture, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by contacting Janet Stewart, Director, Legal Services, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804, (405) 522-5803.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available from the Legal Services Division, Oklahoma Department of Agriculture (address above).

CONTACT PERSON:

Janet Stewart, Director, Legal Services, Oklahoma Department of Agriculture, (405) 522-5803

[OAR Docket #02-1429; filed 11-6-02]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 10. AGRICULTURAL PRODUCTS

[OAR Docket #02-1426]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 15. National Type Evaluation Program
35:10-15-2 [AMENDED]
35:10-15-3 [AMENDED]

SUMMARY:

The purpose of the proposed rules is to exempt cotton bale weighing devices from NTEP requirements. The amended rules are needed to protect the few remaining cotton gins located in Oklahoma and allow those wishing to do so to upgrade the weighing devices used at these facilities, thus providing an adequate local market to the cotton producers of this state.

AUTHORITY:

Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), 2-4(29), 14-33, and 14-34

COMMENT PERIOD:

Persons may submit written and oral comments to Charles Carter at 2800 North Lincoln Boulevard, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from December 2, 2002 through January 2, 2003.

PUBLIC HEARING:

A public hearing will be held at 9:00 a.m., January 2, 2003 in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

Notices of Rulemaking Intent

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by contacting Charles Carter, Oklahoma Department of Agriculture, Food, and Forestry, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above address.

CONTACT PERSON:

Charles Carter, (405) 522-5968

[OAR Docket #02-1426; filed 11-6-02]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 15. ANIMAL INDUSTRY

[OAR Docket #02-1428]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 11. Importation of Livestock, Poultry, and Pets
[AMENDED]

Part 1. General

35:15-11-1 [AMENDED]

Part 7. Livestock

35:15-11-19 [REVOKED]

SUMMARY:

The amendment of 35:15-11-1 does away with the incorporation by reference of a definition from the 1991 statutes specifically. By revoking 35:15-11-19, ratitae being imported into the state will face less requirements, however, they will still face the same requirements as other species susceptible to avian influenza.

AUTHORITY:

Article 6, Section 31, Constitution of the State of Oklahoma, Title 2 O.S. 2001, §§ 2-4(2)(7)(16)(17)(29); 6-2; 6-150 et seq.; Oklahoma State Board of Agriculture

COMMENT PERIOD:

Persons may submit written and oral comments to Dr. Burke Healey at 2800 North Lincoln Boulevard, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from December 2, 2002 through January 2, 2003.

PUBLIC HEARING:

A public hearing will be held at 10:00 a.m., January 2, 2003 in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by contacting Dr. Burke Healey, Oklahoma Department of Agriculture, Food,

and Forestry, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above address.

CONTACT PERSON:

Dr. Burke Healey, (405) 522-6134

[OAR Docket #02-1428; filed 11-6-02]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 30. PLANT INDUSTRY

[OAR Docket #02-1427]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 37. Nursery Stock Sales

35:30-37-11 [NEW]

SUMMARY:

The purpose of the proposed rule is to include specific noxious aquatic plants as plant pests under the Oklahoma Horticulture Law. This rule is needed to prevent the release of aquatic plant pests that cause damage to farm ponds, streams, lake, reservoirs, and lagoons and that may harm the agricultural, recreational, and commercial industries in Oklahoma that are dependent upon these waters.

AUTHORITY:

Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and 3-32.1 et seq.

COMMENT PERIOD:

Persons may submit written and oral comments to Jeanetta Cooper at 2800 North Lincoln Boulevard, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from December 2, 2002 through January 2, 2003.

PUBLIC HEARING:

A public hearing will be held at 9:30 a.m., January 2, 2003 in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by contacting Jeanetta Cooper, Oklahoma Department of Agriculture, Food, and Forestry, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above address.

CONTACT PERSON:

Jeanetta Cooper, (405) 522-5971

[OAR Docket #02-1427; filed 11-6-02]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 30. PLANT INDUSTRY**

[OAR Docket #02-1430]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 17. Combined Pesticide
- Part 3. Certification, Conduct of Examinations, and Recertification
35:30-17-4 [AMENDED]
- Part 5. Prerequisites for Licensing
35:30-17-10 [AMENDED]
35:30-17-11 [AMENDED]
- Part 8. Expiration of Registrations and Permits
35:30-17-17 [AMENDED]
35:30-17-18 [AMENDED]
- Part 9. Minimum Standards for Contracts and Keeping of Records
35:30-17-21 [AMENDED]
- Part 10. Minimum Standards for Pesticides
35:30-17-22.4 [AMENDED]
- Part 13. Restricted Areas for the Application of Hormone Type Pesticides
35:30-17-33 [AMENDED]

SUMMARY:

The changes proposed to these existing rules allow practical examinations to be conducted at training centers at Oklahoma State University. The amount of deductible for insurance policies of commercial applicators will be raised to \$5,000. The Department review time for applications and registrations will be extended from ten (10) to fifteen (15) working days. Language used to stagger expiration dates for pesticide registrations and restricted use dealer permits is being deleted because implementation is now complete. Commercial applicators applying pesticides with a special permit will be required to use satellite tracking and provide those records to the Board within fourteen (14) business days. Applicants identifying an applicator who has had reoccurring violations within the previous thirty-six (36) months will be denied a special permit. Additionally, there is some general language clean-up regarding pesticide records and restricted dealer records that are required to be kept.

AUTHORITY:

Oklahoma State Board of Agriculture; 2 O.S. 2001 § 3-85(A)(1)

COMMENT PERIOD:

Persons may submit written and oral comments to Bill Taylor at 2800 North Lincoln Boulevard, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804 during the period from December 2, 2002 through January 2, 2003.

PUBLIC HEARING:

A public hearing will be held at 11:00 a.m., January 2, 2003 in the Board Room of the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Bill Taylor at the above address during the period from December 2, 2002 through January 2, 2003.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained by contacting Bill Taylor, Oklahoma Department of Agriculture, Food, and Forestry, P. O. Box 528804, Oklahoma City, Oklahoma 73152-8804.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement is available at the above address.

CONTACT PERSON:

Bill Taylor, (405) 522-6347

[OAR Docket #02-1430; filed 11-6-02]

**TITLE 45. ALCOHOLIC BEVERAGE LAWS ENFORCEMENT COMMISSION
CHAPTER 10. PROVISIONS AND PENALTIES APPLICABLE TO ALL LICENSEES**

[OAR Docket #02-1407]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 3. Provisions Applicable to All Licensees
- 45:10-3-12. Restriction on delivery of alcoholic beverages [AMENDED]

SUMMARY:

The proposed rule changes the days on which retailers may accept deliveries from wholesalers. The rule is being changed to reflect a statutory change in the days wholesalers are permitted to make deliveries to retailers. Acceptance of deliveries of alcoholic beverages will be prohibited on Saturdays, Sundays and certain holidays. The rule will confirm to the provisions of Title 37 O.S., Section 537(D).

Notices of Rulemaking Intent

AUTHORITY:

Alcoholic Beverage Laws Enforcement Commission, 37 O.S., Section 502 et seq.

COMMENT PERIOD:

Any interested party may present their views by submitting them in writing by 4:30 p.m., January 15, 2003, to the ABLE Commission, 4545 North Lincoln, Suite 270, Oklahoma City, Oklahoma.

PUBLIC HEARING:

A public hearing regarding the proposed rule change will be held before the ABLE Commission at 10:00 a.m., on January 17, 2003, at 4545 North Lincoln, Suite 270, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

A copy of the proposed rule may be obtained for review by the public from the ABLE Commission, 4545 North Lincoln, Suite 270, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

The ABLE Commission will prepare a rule impact statement which will be available on December 17, 2002, from the ABLE Commission, 4545 North Lincoln, Suite 270, Oklahoma City, Oklahoma.

CONTACT PERSON:

Kurt Morgan, (405) 521-3484

[OAR Docket #02-1407; filed 11-5-02]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES

[OAR Docket #02-1432]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 13. Student Assessment
- 210:10-13-2 [AMENDED]
- 210:10-13-4 [AMENDED]
- 210:10-13-6 [AMENDED]
- 210:10-13-7 [AMENDED]
- 210:10-13-14 [AMENDED]

SUMMARY:

The purpose of the proposed rule changes is to facilitate effective implementation of the mandated assessment testing by aligning current rules with the requirements of 2001 federal law, No Child Left Behind (HR1), by aligning rules with requirements of state statute, and by clarifying terminology.

AUTHORITY:

70 O.S. § 3-104, State Board of Education

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m. on January 22, 2003 at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 11 a.m. on Thursday, January 23, 2003 at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 11:05 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies are on file for public viewing in the office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

A Rule Impact Statement for the amendments has been prepared, as required by law, is available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

CONTACT PERSON:

Valerie Payne, 405-521-3308

[OAR Docket #02-1432; filed 11-6-02]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 15. CURRICULUM AND INSTRUCTION

[OAR Docket #02-1433]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 3. ~~Curriculum Standards~~ Priority Academic Student Skills [AMENDED]
- Subchapter 5. Priority Academic Student Skills [REVOKED]

SUMMARY:

The need for the changes to rules are set forth in 70 O.S. § 11-103.6(a), which states the State Board of Education must review the *Priority Academic Student Skills* (PASS), Oklahoma's core curriculum, every three (3) years. The rule changes will add clarity and detail to the PASS and will also align with current national curriculum standards.

AUTHORITY:

70 O.S. § 3-104, State Board of Education

COMMENT PERIOD:

All interested persons wishing to present their views orally or in writing may do so before 4:30 p.m. on January 22, 2003 at the following address: Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

PUBLIC HEARING:

A public hearing will be held at 11 a.m. on Thursday, January 23, 2003 at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Suite 1-20, Oklahoma City, Oklahoma 73105-4599. Persons wishing to speak must sign in at the door of the State Board Room by 11:05 a.m.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies are on file for public viewing in the office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

A Rule Impact Statement for the amendments has been prepared, as required by law, is available at the Office of the State Board of Education, Room 1-18, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

CONTACT PERSON:

Valerie Payne, 405-521-3308

[OAR Docket #02-1433; filed 11-6-02]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 205. HAZARDOUS WASTE MANAGEMENT**

[OAR Docket #02-1434]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 3. Incorporation by Reference
- 252:205-3-1 [AMENDED]
- 252:205-3-2 [AMENDED]
- 252:205-3-3 [REVOKED]

SUMMARY:

The purpose of the proposed amendment to 252:205-3-1 is to adopt by reference the federal hazardous waste regulations found in Title 40 of the Code of Federal Regulations (40 CFR) published on July 1, 2002, specifically: 1) 66 FR 58258-58300, published November 20, 2001, regarding three newly listed hazardous wastes generated from inorganic chemical manufacturing processes; 2) 67 FR 2962-3029, published January 22, 2002, regarding amendments to the Corrective Action Management Unit Rule; 3) 67 11251-11254, published March 13, 2002, regarding the classification of

mineral processing characteristic sludges and by-products being reclaimed as solid wastes under RCRA's hazardous waste management regulations; and the decision that the Toxicity Characteristic Leaching Procedure may not be used for determining whether manufactured gas plant waste is hazardous under RCRA; 4) 67 FR 17119-17120, published April 9, 2002, regarding corrections to 66 FR 58258-58300, published November 20, 2001. The purpose of the proposed amendment to 252:205-3-2(f) is to update the amendment reflective of the adoption by reference of the federal hazardous waste regulations published in 40 CFR on July 1, 2002. The proposed revision to 252:205-3-3 involves revoking the incorporation of new or superseding amendments which are now contained in the 40 CFR published on July 1, 2002.

AUTHORITY:

Environmental Quality Board and Hazardous Waste Management Advisory Council powers and duties, 27A O.S., §§ 2-2-101, 2-2-104, 2-2-201, 2-7-105, and 2-7-106

COMMENT PERIOD:

Oral comments may be made at the meeting of the Hazardous Waste Management Advisory Council, January 16, 2003, and at the Environmental Quality Board meeting, February 28, 2003. Written comments may be delivered or mailed to the contact person from December 2, 2002 through January 15, 2003.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council Meeting on January 16, 2003, at 10:00 a.m. at the Oklahoma City office of the Department of Environmental Quality, Multi-Purpose Room, 707 North Robinson, Oklahoma City, Oklahoma 73102. Before the Environmental Quality Board on February 28, 2003 at 9:30 a.m. at the Oklahoma City office of the Department of Environmental Quality, Multi-Purpose Room, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities affected by this rule provide the DEQ, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule.

COPIES OF PROPOSED RULES:

The proposed rules may be obtained from the contact person or reviewed at the Department of Environmental Quality.

RULE IMPACT STATEMENT:

The rule impact statements for the proposed rules will be on file at the Department of Environmental Quality and may be requested from the contact person.

CONTACT PERSON:

Catherine Sharp, (405) 702-5100, 707 N. Robinson, Fifth Floor, mailing address P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

Notices of Rulemaking Intent

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three days in advance of the hearing. For hearing impaired, the TDD Relay Number is 1-800-722-0353 for TDD machine use only.

[OAR Docket #02-1434; filed 11-6-02]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 605. DISCHARGE STANDARDS

[OAR Docket #02-1446]

RULEMAKING ACTION:

Notice of proposed PERMANANT rulemaking

PROPOSED RULES:

Subchapter 1. Introduction

252:605-1-5 [AMENDED]

252:605-1-9 [AMENDED]

SUMMARY:

This rulemaking is necessary to incorporate by reference the most recent version of the federal regulations for operation of the federally delegated program. This rulemaking incorporates the Code of Federal Regulations as of July 1, 2002 by reference. Additionally, this rulemaking removes one incorporated federal regulation that is no longer required to be a part of the state program.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, and 2-6-201 *et seq.*

COMMENT PERIOD:

Oral comments may be made at the meeting of the Water Quality Management Advisory Council, January 14, 2003. Written comments may be delivered or mailed to the contact person from December 2, 2002 through January 14, 2003.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council Meeting on January 14, 2003, at 1:00 P.M. at the Department of Environmental Quality, Multi-Purpose Room, 707 N. Robinson, Oklahoma City, Oklahoma 73101. Before the Environmental Quality Board on February 28, 2003, 9:30 a.m. at the Department of Environmental Quality, Multi-Purpose Room, 707 N. Robinson, Oklahoma City, Oklahoma 73101.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that entities affected by this rule provide the DEQ, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule.

COPIES OF PROPOSED RULES:

The proposed rule may be obtained from the contact person, the DEQ website, or reviewed at the Department of Environmental Quality.

RULE IMPACT STATEMENT:

The rule impact statement for the proposed rule will be on file at the Department of Environmental Quality and may be requested from the contact person.

CONTACT PERSON:

Contact Shellie Chard-McClary at (405) 702-8100 (phone) or 702-8101 (fax) or shellie.chard-mcclary@deq.state.ok.us. The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three days in advance of the hearing. For hearing impaired, the TDD Relay Number is 1-800-722-0353 for TDD machine use only.

[OAR Docket #02-1446; filed 11-8-02]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 648. LAND APPLICATION OF BIOSOLIDS

[OAR Docket #02-1445]

RULEMAKING ACTION:

Notice of proposed PERMANANT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

252:648-1-3 [AMENDED]

SUMMARY:

This rulemaking is necessary to incorporate by reference the most recent version of the federal regulations for operation of the federally delegated program. This rulemaking incorporates the Code of Federal Regulations as of July 1, 2002 by reference.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, 2-6-201 *et seq.*, and 2-6-501 *et seq.*

COMMENT PERIOD:

Oral comments may be made at the meeting of the Water Quality Management Advisory Council, January 14, 2003. Written comments may be delivered or mailed to the contact person from December 2, 2002 through January 14, 2003.

PUBLIC HEARINGS:

Before the Water Quality Management Advisory Council meeting on January 14, 2003, at 1:00 P.M. at the Department of Environmental Quality, Multi-Purpose Room, 707 N. Robinson, Oklahoma City, Oklahoma 73101. Before the Environmental Quality Board on February 28, 2003, 9:30 a.m.

at the Department of Environmental Quality, Multi-Purpose Room, 707 N. Robinson, Oklahoma City, Oklahoma 73101.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that entities affected by this rule provide the DEQ, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule.

COPIES OF PROPOSED RULES:

The proposed rule may be obtained from the contact person, the DEQ website, or reviewed at the Department of Environmental Quality.

RULE IMPACT STATEMENT:

The rule impact statement for the proposed rule will be on file at the Department of Environmental Quality and may be requested from the contact person.

CONTACT PERSON:

Contact Shellie Chard-McClary at (405) 702-8100 (phone) or 702-8101 (fax) or shellie.chard-mcclary@deq.state.ok.us. The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three days in advance of the hearing. For hearing impaired, the TDD Relay Number is 1-800-722-0353 for TDD machine use only.

[OAR Docket #02-1445; filed 11-8-02]

**TITLE 318. HIGHWAY CONSTRUCTION MATERIALS TECHNICIAN CERTIFICATION BOARD
CHAPTER 10. EXAMINATION AND CERTIFICATION**

[OAR Docket #02-1404]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- 318:10-1-4. Examination criteria [AMENDED]
- 318:10-1-6. Re-certification [AMENDED]
- 318:10-1-7. Temporary certification [AMENDED]
- 318:10-1-8. Continuing Training Requirements [AMENDED]
- 318:10-1-10. Grounds for discipline [AMENDED]
- 318:10-1-11. Fees [AMENDED]

SUMMARY:

The Board rules safeguard the public health, safety and welfare by regulating those individuals seeking certification to

sample and test highway construction material. The proposed changes to the rules:

- a. Eliminate minimum time to re-satisfy certification requirements after initial failure,
- b. Emphasize requirement to pass practical as well as written examination before being considered for certification,
- c. Recognize that re-certification requirements are the same as for original certification,
- d. Extend allowable time to complete re-certification requirements from thirty (30) days to one year prior to expiration of certification period,
- e. Revise temporary certification expiration date from ninety (90) days or after the Board's next regular meeting to the date of the next available certification module,
- f. Allow Program Director to grant temporary certification upon applicant passing written examination and enrolling in and paying for next available certification module,
- g. Omit reference to "gross negligence" in defining failure to successfully complete continuing training but add "grounds for" Board discipline,
- h. **Define "misconduct" in detail, including incapacity or incompetence,**
- i. Revise fee amounts to coincide with current certification offerings using previously approved daily rates.

AUTHORITY:

69 O.S. Supp. 2000, § 1954., Highway Construction Materials Technician Certification Board.

COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so by visiting, calling, mailing, facsimiling, or e-mailing their comments to the contact person shown below. Comments will be received until the scheduled public hearing set forth below.

PUBLIC HEARING:

January 8, 2003 at 10:00 a.m.
Materials Division Conference Room
Oklahoma Department of Transportation
200 N. E. 21st Street
Oklahoma City, OK 73105

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Board requests that business entities affected by these proposed rules provide it, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by the particular business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Scott Seiter, at the address below, before the close of the comment period on January 7, 2003.

COPIES OF PROPOSED RULES:

Materials Division
Oklahoma Department of Transportation
200 N. E. 21st Street
Oklahoma City, OK 73105, and

Notices of Rulemaking Intent

Training Center
Oklahoma Department of Transportation
1025 S. E. 59th Street
Oklahoma City, OK 73129

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement will be prepared prior to December 17, 2002, and may be obtained from the Board at the address below.

CONTACT PERSON:

Scott Seiter, Materials Division
Oklahoma Department of Transportation
200 N. E. 21st Street
Oklahoma City, OK 73105
(405) 521-2677
Facsimile: (405) 522-0552
E-Mail: sseiter@odot.org

[OAR Docket #02-1404; filed 11-4-02]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 75. OKLAHOMA-BRED PROGRAM

[OAR Docket #02-1405]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

325:75-1-3. Definition of accredited Oklahoma-Bred
[AMENDED]

SUMMARY:

Changes in the Definition of Broodmare are proposed to address the situation of an accredited Oklahoma-Bred broodmare sold and moved out-of-state and later purchased and returned to Oklahoma. The changes would resolve unintended consequences in such a situation of the current Broodmare definition.

AUTHORITY:

75 O.S., §303; Title 3A O.S. §204(A); Oklahoma Horse Racing Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Friday, January 3, 2003, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Friday, January 3, 2003, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the public hearing must sign a speaker's register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the Commission, within the comment period, in dollar amounts, if possible, the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rule. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on January 3, 2003.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained from the Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by December 9, 2002 and may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

Bonnie Morris, Assistant to the Administrator, (405) 943-6472.

[OAR Docket #02-1405; filed 11-4-02]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 75. OKLAHOMA-BRED PROGRAM

[OAR Docket #02-1406]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

325:75-1-12. Registration requirements, categories and fees. [AMENDED]

SUMMARY:

The introduction of registration deadlines for the reaccreditation of a broodmare would resolve unintended consequences to address the situation of an accredited Oklahoma-Bred broodmare sold and moved out-of-state and later purchased and returned to Oklahoma.

AUTHORITY:

75 O.S., §303; Title 3A O.S. §204(A); Oklahoma Horse Racing Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Friday, January 3, 2003, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Friday,

January 3, 2003, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107. Anyone who wishes to present oral comment at the public hearing must sign a speaker's register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the Commission, within the comment period, in dollar amounts, if possible, the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rule. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on January 3, 2003.

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained from the Oklahoma Horse Racing Commission, Shepherd Mall, N.W. 23rd Street and Villa Avenue, 2614 Villa Prom, Oklahoma City, OK 73107.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by December 9, 2002 and may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

Bonnie Morris, Assistant to the Administrator, (405) 943-6472.

[OAR Docket #02-1406; filed 11-4-02]

**TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #02-1431]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 1. Administrative Operations [AMENDED]

SUMMARY:

The rules and regulations are necessary to promote and enhance effective operation of the State and Education Employees Group Insurance Program. It is proposed that the rules and regulations be amended. The effect of the amended rules is to provide for the continued efficiency and responsiveness of the insurance program, to conform to certain legislation, and to reflect changes in benefit plans.

AUTHORITY:

74 O.S. Section 1304; 74 O.S. Section 1306. State and Education Employees Group Insurance Board

COMMENT PERIOD:

Written comments may be made from this date until January 6, 2003. Comments should be filed in the office of Gary Goff, Attorney, Assistant Administrator, State and Education Employees Group Insurance Board, located at 3545 NW 58th Street, Suite 1000, Oklahoma City, Oklahoma 73112.

PUBLIC HEARING:

8:00 am, January 6, 2003, in the 5th Floor Board Room of the State and Education Employees Group Insurance Board, 3545 NW 58th Street, Oklahoma City, Oklahoma. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Gary Goff, Attorney, Assistant Administrator
State and Education Employees Group Insurance Board
3545 NW 58th Street, Suite 1000
Oklahoma City, OK 73112

RULE IMPACT STATEMENT:

This agency has issued a Rule Impact Statement which may be obtained for review by contacting Gary Goff of the State and Education Employees Group Insurance Board.

CONTACT PERSON:

Gary Goff, Attorney, Assistant Administrator, (405) 717-8744

[OAR Docket #02-1431; filed 11-6-02]

**TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD
CHAPTER 10. STATE AND EDUCATION EMPLOYEES HEALTH, LIFE, AND DENTAL PLANS**

[OAR Docket #02-1431A]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 10. State and Education Employees Health, Life, and Dental Plans [AMENDED]

SUMMARY:

The rules and regulations are necessary to promote and enhance effective operation of the State and Education Employees Group Insurance Program. It is proposed that the rules and regulations be amended. The effect of the amended rules is to provide for the continued efficiency and responsiveness of the insurance program, to conform to certain legislation, and to reflect changes in benefit plans.

AUTHORITY:

74 O.S. Section 1304; 74 O.S. Section 1306. State and Education Employees Group Insurance Board

Notices of Rulemaking Intent

COMMENT PERIOD:

Written comments may be made from this date until January 6, 2003. Comments should be filed in the office of Gary Goff, Attorney, Assistant Administrator, State and Education Employees Group Insurance Board, located at 3545 NW 58th Street, Suite 1000, Oklahoma City, Oklahoma 73112.

PUBLIC HEARING:

8:00 am, January 6, 2003, in the 5th Floor Board Room of the State and Education Employees Group Insurance Board, 3545 NW 58th Street, Oklahoma City, Oklahoma. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Gary Goff, Attorney, Assistant Administrator
State and Education Employees Group Insurance Board
3545 NW 58th Street, Suite 1000
Oklahoma City, OK 73112

RULE IMPACT STATEMENT:

This agency has issued a Rule Impact Statement which may be obtained for review by contacting Gary Goff of the State and Education Employees Group Insurance Board.

CONTACT PERSON:

Gary Goff, Attorney, Assistant Administrator, (405) 717-8744

[OAR Docket #02-1431A; filed 11-6-02]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD CHAPTER 15. THE DISABILITY PROGRAM

[OAR Docket #02-1431B]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 15. The Disability Program [AMENDED]

SUMMARY:

The rules and regulations are necessary to promote and enhance effective operation of the State and Education Employees Group Insurance Program. It is proposed that the rules and regulations be amended. The effect of the amended rules is to provide for the continued efficiency and responsiveness of the insurance program, to conform to certain legislation, and to reflect changes in benefit plans.

AUTHORITY:

74 O.S. Section 1304; 74 O.S. Section 1306; 74 O.S. Section 1332 State and Education Employees Group Insurance Board

COMMENT PERIOD:

Written comments may be made from this date until January 6, 2003. Comments should be filed in the office of Gary Goff, Attorney, Assistant Administrator, State and Education

Employees Group Insurance Board, located at 3545 NW 58th Street, Suite 1000, Oklahoma City, Oklahoma 73112.

PUBLIC HEARING:

8:00 am, January 6, 2003, in the 5th Floor Board Room of the State and Education Employees Group Insurance Board, 3545 NW 58th Street, Oklahoma City, Oklahoma. Each person will be allowed a maximum of 5 minutes to speak and must sign in at the door.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Gary Goff, Attorney, Assistant Administrator
State and Education Employees Group Insurance Board
3545 NW 58th Street, Suite 1000
Oklahoma City, OK 73112

RULE IMPACT STATEMENT:

This agency has issued a Rule Impact Statement which may be obtained for review by contacting Gary Goff of the State and Education Employees Group Insurance Board.

CONTACT PERSON:

Gary Goff, Attorney, Assistant Administrator, (405) 717-8744

[OAR Docket #02-1431B; filed 11-6-02]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 21. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC), ORGANIZATIONS AND INSTRUCTORS

[OAR Docket #02-1408]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and Instructors

450:21-1-2 [AMENDED]

450:21-1-3 [AMENDED]

450:21-1-5 [AMENDED]

450:21-1-6 [AMENDED]

450:21-1-7 [AMENDED]

450:21-1-7.2 [AMENDED]

450:21-1-8 [AMENDED]

450:21-1-9 [AMENDED]

450:21-1-10 [AMENDED]

450:21-1-11 [AMENDED]

Subchapter 3. Certification Denial or Sanctions

450:21-3-1 [AMENDED]

450:21-3-2 [AMENDED]

450:21-3-3 [AMENDED]

Subchapter 5. Course Attendance and Completion

450:21-5-1 [AMENDED]

450:21-5-2 [AMENDED]

SUMMARY:

In compliance with the Administrative Procedures Act the proposed rule revisions to Chapter 21 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory changes; amendment or repeal of rules; delete redundant or superfluous language; and correct scrivener's errors.

AUTHORITY:

43A O.S. §§ 2-101, 2-202, 3-415, 3-451 through 3-460; and 47 O.S. § 6-212.2, Department of Mental Health and Substance Abuse Services.

COMMENT PERIOD:

Persons wishing to submit written comments may do so until 5:00 p.m., January 6, 2003 to the attention of Linda Winton, Policy Analyst and Agency Liaison Officer, at the Department of Mental Health and Substance Abuse Services, P.O. Box 53277, Oklahoma City, OK 73152-3277, or hand delivered to the Department at 1200 N.E. 13th Street, Oklahoma City, or by facsimile, at (405) 522-3867.

PUBLIC HEARING:

A public hearing will be held on January 7, 2002, 11:00 a.m. in the Department's Main Conference Room at the address given above.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by the proposed rules are asked to provide written information to the Department, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information until 5:00 p.m., January 6, 2003 to the Department of Mental Health and Substance Abuse Services, P. O. Box 53277, Oklahoma City, OK, 73152-3277, Attention: Linda Winton.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from Linda Winton, Policy Analyst and Agency Liaison Officer, at the above address.

RULE IMPACT STATEMENT:

Pursuit to 75 O.S. § 303(D) a rule impact statement will be prepared within fifteen (15) days of the publication of this Notice of Rulemaking Intent. Copies may be obtained from Linda Winton, Policy Analyst and Agency Liaison Officer, at the address above.

CONTACT PERSON:

Linda Winton, Policy Analyst and Agency Liaison Officer. (405) 522-6765.

[OAR Docket #02-1408; filed 11-5-02]

**TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 22. CERTIFICATION OF ALCOHOL AND DRUG ASSESSMENT AND EVALUATION PROGRAMS RELATED TO DRIVER'S LICENSE REVOCATION**

[OAR Docket #02-1409]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- 450:22-1-1 [AMENDED]
- 450:22-1-1.1 [AMENDED]
- 450:22-1-2 [AMENDED]
- 450:22-1-3 [AMENDED]
- 450:22-1-4 [AMENDED]
- 450:22-1-5 [AMENDED]
- 450:22-1-6 [AMENDED]
- 450:22-1-7 [AMENDED]
- 450:22-1-8 [AMENDED]
- 450:22-1-9 [AMENDED]
- 450:22-1-10 [AMENDED]
- 450:22-1-11 [AMENDED]
- 450:22-1-12 [AMENDED]
- 450:22-1-13 [AMENDED]
- 450:22-1-14 [AMENDED]
- 450:22-1-15 [AMENDED]
- 450:22-1-16 [AMENDED]

SUMMARY:

In compliance with the Administrative Procedures Act the proposed rule revisions to Chapter 22 are part of the Department's review of Title 450. These proposed amendments are intended to comply with statutory changes; amendment or repeal of rules; delete redundant or superfluous language; and correct scrivener's errors.

AUTHORITY:

43A O.S. §§ 2-101, 2-202 and 3-415; 47 O.S. §§ 6-212.2 and 11-902; and 22 O.S. §§ 991a and 991c, Department of Mental Health and Substance Abuse Services.

COMMENT PERIOD:

Persons wishing to submit written comments may do so until 5:00 p.m., January 6, 2003 to the attention of Linda Winton, Policy Analyst and Agency Liaison Officer, at the Department of Mental Health and Substance Abuse Services, P.O. Box 53277, Oklahoma City, OK 73152-3277, or hand delivered to the Department at 1200 N.E. 13th Street, Oklahoma City, or by facsimile, at (405) 522-3867.

PUBLIC HEARING:

A public hearing will be held on January 7, 2002, 9:00 a.m. in the Department's Main Conference Room at the address given above.

Notices of Rulemaking Intent

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by the proposed rules are asked to provide written information to the Department, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information until 5:00 p.m., January 6, 2003 to the Department of Mental Health and Substance Abuse Services, P. O. Box 53277, Oklahoma City, OK, 73152-3277, Attention: Linda Winton.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from Linda Winton, Policy Analyst and Agency Liaison Officer, at the above address.

RULE IMPACT STATEMENT:

Pursuit to 75 O.S. § 303(D) a rule impact statement will be prepared within fifteen (15) days of the publication of this Notice of Rulemaking Intent. Copies may be obtained from Linda Winton, Policy Analyst and Agency Liaison Officer, at the address above.

CONTACT PERSON:

Linda Winton, Policy Analyst and Agency Liaison Officer.
(405) 522-6765.

[OAR Docket #02-1409; filed 11-5-02]

TITLE 465. OKLAHOMA MOTOR VEHICLE COMMISSION CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #02-1425]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULE:

Subchapter 9. Petitions
465:1-9-2 [AMENDED]

SUMMARY:

This rule outlines the particulars concerning the declaratory ruling process. The term "statute" needs to be included for clarification purposes only.

AUTHORITY:

Oklahoma Motor Vehicle Commission, 47 O.S. Section 563 (F).

COMMENT PERIOD:

Persons wishing to make written or oral comments may do so before 4:30 p.m. on Friday January 3, 2003 at the Oklahoma Motor Vehicle Commission, 4334 N.W. Expressway, Suite 183, Oklahoma City, OK 73116.

PUBLIC HEARING:

A public hearing has not been scheduled, however, "persons may demand a hearing" pursuant to and in accordance with

75 O.S., Section 303 (B)(8). Please make your request in writing by January 3, 2003 to the Oklahoma Motor Vehicle Commission at the location listed above.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULE:

Copy of the proposed rule may be obtained in person or by written request from the Oklahoma Motor Vehicle Commission located at the above named address at the cost of .25 cents per page.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be prepared no later than December 16, 2002 and may be obtained from the Oklahoma Motor Vehicle Commission at the above address.

CONTACT PERSON:

Roy K. Dockum, Executive Director (405) 521-2375

[OAR Docket #02-1425; filed 11-6-02]

TITLE 465. OKLAHOMA MOTOR VEHICLE COMMISSION CHAPTER 10. LICENSE

[OAR Docket #02-1424]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Commission Licensing Procedures
465:10-1-2 [AMENDED]
465:10-1-3 [AMENDED]
465:10-1-4 [AMENDED]
465:10-1-5 [AMENDED]
465:10-1-6 [AMENDED]
465:10-1-7 [AMENDED]
Subchapter 3. License Identification and Changes
465:10-3-3 [AMENDED]
Subchapter 7. Off Premise Sale and Display
465:10-7-3 [AMENDED]

SUMMARY:

The Rules in Subchapter 1 outline Commission procedures for approving initial license applications. Currently, the Board reviews and approves initial license applications for manufacturers, distributors and dealers of new motor vehicles. The Rule only provides for the Board to examine dealers' applications and not manufacturers or distributors. Hence, this amendment is necessary for the Rule to coincide with the standard method of operations. The Rule in Subchapter 3 is needed to clarify which dealership personnel are required to obtain a Salesperson License. The Rule in Subchapter 7 provides further definition of what constitutes an off premise sale of motor vehicles.

AUTHORITY:

Oklahoma Motor Vehicle Commission, 47 O.S. Sections 563 (F), 564, and 564.1.

COMMENT PERIOD:

Persons wishing to make written or oral comments may do so before 4:30 p.m. on Friday January 3, 2003 at the Oklahoma Motor Vehicle Commission, 4334 N.W. Expressway, Suite 183, Oklahoma City, OK 73116.

PUBLIC HEARING:

A public hearing has not been scheduled, however, "persons may demand a hearing" pursuant to and in accordance with 75 O.S., Section 303 (B)(8). Please make your request in writing by January 3, 2003 to the Oklahoma Motor Vehicle Commission at the location listed above.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing by Friday January 3, 2003 to the Oklahoma Motor Vehicle Commission at the location listed above.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained in person or by written request from the Oklahoma Motor Vehicle Commission located at the above named address at the cost of .25 cents per page. Each new motor vehicle dealer has been provided a copy via U.S. Post Office.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be prepared no later than December 16, 2002 and may be obtained from the Oklahoma Motor Vehicle Commission at the above address.

CONTACT PERSON:

Roy K. Dockum, Executive Director (405) 521-2375

[OAR Docket #02-1424; filed 11-6-02]

**TITLE 465. OKLAHOMA MOTOR VEHICLE COMMISSION
CHAPTER 15. ADVERTISING**

[OAR Docket #02-1423]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. General Provisions
465:15-1-2 [AMENDED]
- Subchapter 3. Specific Advertising Regulations
465:15-3-14 [AMENDED]

Subchapter 7. Enforcement

465:15-7-1 [AMENDED]

465:15-7-2 [AMENDED]

SUMMARY:

The proposed rule amendments would modify the current advertising regulations under the headings of Prohibited Statements, Definitions, and Advertising Enforcement. These amendments would update and provide clarity to the rules in response to the ever changing styles and trends of advertising by new motor vehicle dealers. The intended effect of the proposed amendments will assist the Commission with proper enforcement to protect the citizens of Oklahoma from false and misleading advertising and ensure fair treatment for all dealers.

AUTHORITY:

Oklahoma Motor Vehicle Commission, 47 O.S. Section 563 (F) and Section 565 5(b).

COMMENT PERIOD:

Persons wishing to make written or oral comments may do so before 4:30 p.m. on Friday January 3, 2003 at the Oklahoma Motor Vehicle Commission, 4334 N.W. Expressway, Suite 183, Oklahoma City, OK 73116.

PUBLIC HEARING:

A public hearing has not been scheduled, however, "persons may demand a hearing" pursuant to and in accordance with 75 O.S., Section 303 (B)(8). Please make your request in writing by January 3, 2003 to the Oklahoma Motor Vehicle Commission at the location listed above.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing by Friday January 3, 2003 to the Oklahoma Motor Vehicle Commission at the location listed above.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained in person or by written request from the Oklahoma Motor Vehicle Commission located at the above named address at the cost of .25 cents per page. Each new motor vehicle dealer has been provided a copy via U.S. Post Office.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., Section 303(D), a rule impact statement will be prepared no later than December 16, 2002 and may be obtained from the Oklahoma Motor Vehicle Commission at the above address.

CONTACT PERSON:

Roy K. Dockum, Executive Director (405) 521-2375

[OAR Docket #02-1423; filed 11-6-02]

Notices of Rulemaking Intent

TITLE 510. STATE BOARD OF OSTEOPATHIC EXAMINERS CHAPTER 5. PROFESSIONAL STANDARDS

[OAR Docket #02-1395]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

- Subchapter 13. Advertising Board Certification (New)
- 510:5-13-1. Requirements of Representation (New)
- 510:5-13-2. Requirements of Certifying Organizations (New)
- 510:5-13-3. Renewal (New)
- 510:5-13-4. Prohibited Terms (New)

SUMMARY:

The proposed additions to Subchapter 13 are to protect public health, safety, and welfare by setting forth objective criteria that must be met by any osteopathic physician who desires to represent himself to the public as possessing enhanced medical skills and expertise in an area of osteopathic medicine by claiming to be "board certified," or "diplomate," or any similar word or phrase, and to establish objective requirements for any certifying organization, requiring updated credentials, and prohibiting the use of certain deceptively similar terms by an osteopathic physician.

AUTHORITY:

Oklahoma Osteopathic Medicine Act; 59 O.S. 2001, Sec. 624, et seq.

COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so before March 20, 2003, at the following address: Gary Clark, Executive Director, Oklahoma State Board of Osteopathic Examiners, 4848 North Lincoln Blvd., Suite 100, Oklahoma City, OK 73105.

PUBLIC HEARING:

A public hearing will be held at 10:00 A.M., on March 20, 2003, at the office of the Oklahoma State Board of Osteopathic Examiners, 4848 North Lincoln Blvd., Suite 100, Oklahoma City, OK 73105. Anyone who wishes to speak must appear by the hour of 9:30 A.M.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma State Board of Osteopathic Examiners, 4848 North Lincoln Blvd., Suite 100, Oklahoma City, OK 73105.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. 2001, Sec. 303(D), a Rule Impact Statement will be prepared and available on September 20, 2002, and may be obtained from the Oklahoma State Board of Osteopathic Examiners at the above address.

CONTACT PERSON:

Gary Clark, Executive Director, Oklahoma State Board of Osteopathic Examiners, (405) 528-8625.

[OAR Docket #02-1395; filed 10-28-02]

TITLE 510. STATE BOARD OF OSTEOPATHIC EXAMINERS CHAPTER 10. LICENSURE OF OSTEOPATHIC PHYSICIANS AND SURGEONS

[OAR Docket #02-1394]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

- Subchapter 7. Fee Schedule
- 510:10-7-1. Fees for Licensure (Amended)

SUMMARY:

The proposed additions to Subchapter 7 are to protect public health, safety and welfare by making the first fee increases since 1991. As a self-funded body, without any appropriated funds, the board must earn income through fee for services in order to allow it to hire competent professionals to carry out all statutory duties and responsibilities. These fee increases will allow the board to provide increased services and safety to the Oklahoma public.

AUTHORITY:

Oklahoma Osteopathic Medicine Act; 59 O.S. 2001, Sec. 624, et seq.

COMMENT PERIOD:

Persons wishing to present their views orally or in writing may do so before March 20, 2003, at the following address: Gary Clark, Executive Director, Oklahoma State Board of Osteopathic Examiners, 4848 North Lincoln Blvd., Suite 100, Oklahoma City, OK 73105.

PUBLIC HEARING:

A public hearing will be held at 10:00 A.M., on March 20, 2003, at the office of the Oklahoma State Board of Osteopathic Examiners, 4848 North Lincoln Blvd., Suite 100, Oklahoma City, OK 73105. Anyone who wishes to speak must appear by the hour of 9:30 A.M.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Board of Osteopathic Examiners, 4848 North Lincoln Blvd., Suite 100, Oklahoma City, OK 73105.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. 2001, Sec. 303(D), a Rule Impact Statement will be prepared and available on September 20, 2002, and may be obtained from the Oklahoma State Board of Osteopathic Examiners at the above address.

CONTACT PERSON:

Gary Clark, Executive Director, Oklahoma State Board of Osteopathic Examiners, (405) 528-8625.

[OAR Docket #02-1394; filed 10-28-02]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 45. GROSS PRODUCTION, PETROLEUM EXCISE, AND CONSERVATION EXCISE**

[OAR Docket #02-1418]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Chapter 45. Gross Production, Petroleum Excise, and Conservation Excise [AMENDED]

SUMMARY:

The 2002 Legislature enacted statutory changes which require additions, revocations, and amendments to the existing rules in this area. In addition, rule changes are proposed to make clarification of policy, to improve readability, to correct scrivener' errors, to update statutory citation, and to insure accurate internal cross-references.

AUTHORITY:

68 O.S. §203, 1001(M)(1); Oklahoma Tax Commission

COMMENT PERIOD:

Persons wishing to make written submissions may do so by 4:30 p.m., January 3, 2003, to the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194. Those wishing to make oral comments at the public hearing should request placement on the docket well in advance of the hearing date, at the numbers provided below.

PUBLIC HEARING:

A public hearing will be held to provide an additional means by which suggestions may be offered on the content of the proposed rules, 2:00 p.m. Tuesday, January 7, 2003, at the main offices of the Oklahoma Tax Commission, M. C. Connors Building, Room 1-24, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Although nothing in this rulemaking action is expected to adversely impact small business, the Oklahoma Tax Commission (OTC) requests that business entities affected by these rules provide the OTC, within the comment period, in dollar amounts, if possible, information on any increase in direct costs, such as fees, and indirect costs, such as those associated with reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed Rules.

COPIES OF PROPOSED RULES:

Interested persons may inspect proposed rules at the offices of the Oklahoma Tax Commission, Tax Policy Division, 5th floor, M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma. Copies of proposed rules may be obtained without charge from the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma 73194.

RULE IMPACT STATEMENT:

A Rule Impact Statement will be prepared and will be available for review no later than December 17, 2002 from the same source listed above for obtaining copies of proposed rules.

CONTACT PERSON:

Carolyn Swifthurst, Agency Liaison. Phone: 405-521-3133; FAX: 405-522-0063; Email: cswifthurst@oktax.state.ok.us

[OAR Docket #02-1418; filed 11-5-02]

**TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 40. RAILROADS**

[OAR Docket #02-1410]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 1. Railroad Program [NEW]
- Subchapter 3. Railroad Rehabilitation Act Loan Program [NEW]
- 730:40-3-1. [NEW]
- 730:40-3-2. [NEW]
- 730:40-3-3. [NEW]
- 730:40-3-4. [NEW]
- 730:40-3-5. [NEW]
- 730:40-3-6. [NEW]

SUMMARY:

The proposed amendment to Subchapter 1 would provide a title to meet the required naming conventions.

The proposed Subchapter 3 provides the governing rules to be followed by the Department of Transportation to implement the Railroad Rehabilitation Loan Program which will provide low interest loans from the Railroad Revolving Fund to rehabilitate private railroad facilities.

AUTHORITY:

Transportation Commission; 66 O.S. 2002, Section 309.3

COMMENT PERIOD:

Persons wishing to make written or oral comments may do so by January 2, 2003, before 4:00 p.m. at the Oklahoma Department of Transportation, Assistant Director - Administration, 200 N.E. 21st Street, Room 3A2, Oklahoma City, OK 73105.

Notices of Rulemaking Intent

PUBLIC HEARING:

A public hearing will be held on Friday, January 3, 2003 at 10:00 a.m. at the Oklahoma Department of Transportation, Transportation Commission Room, 200 N.E. 21st Street, Oklahoma City, OK 73105.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the Oklahoma Department of Transportation, Assistant Director - Administration, 200 N.E. 21st Street, Room 3A2, Oklahoma City, OK 73105.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement will be prepared and will be available November 6, 2002 at the same location listed above for obtaining copies.

CONTACT PERSON:

Michael E. Mayberry, Assistant Director - Administration, (405) 522-6002.

[OAR Docket #02-1410; filed 11-5-02]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 10. SPORT FISHING RULES

[OAR Docket #02-1416]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 10. Sport Fishing Rules [AMENDED]

SUMMARY:

Rules are being proposed which would reduce bag limits and restrict certain methods of taking to ensure the long-term biological integrity of Oklahoma paddlefish populations.

AUTHORITY:

Title 29 O.S., Sections 3-103, 5-401 and 6-303 and 6-303.1; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so on or before 4:30 p.m., January 17, 2003, at the following address: Oklahoma Department of Wildlife Conservation, Room 219, 1801 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

PUBLIC HEARINGS:

Date: January 13, 2003

Time: 7:00 - 9:00 p.m.

Place: Miami - Miami Civic Center, 129 5th Street NW, Banquet Room

Date: January 14, 2003

Time: 7:00 - 9:00 p.m.

Place: Tulsa - Tulsa Technology Center, Riverside Campus for Applied Science, Technology and Research, 801 East 91st Street, Alliance Bldg Auditorium, Room A-150

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules will be available to the public at 1801 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105, Room 219.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., 303(D), a rule impact statement is being prepared and will be available for review after December 13, 2002 at the above address for the Oklahoma Department of Wildlife Conservation.

CONTACT PERSON:

Kim Erickson, Chief of Fisheries Division, 405/521-3721 or Rhonda Hurst, APA Liaison, 405/522-6279.

[OAR Docket #02-1416; filed 11-5-02]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 10. SPORT FISHING RULES

[OAR Docket #02-1417]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 10. Sport Fishing Rules [AMENDED]

SUMMARY:

Rules are being proposed which would reduce bag limits and restrict certain methods of taking to ensure the long-term biological integrity of Oklahoma paddlefish populations.

AUTHORITY:

Title 29 O.S., Sections 3-103, 5-401 and 6-303 and 6-303.1; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so on or before 4:30 p.m., January 17, 2003, at the following address: Oklahoma Department of Wildlife Conservation, Room 219, 1801 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

PUBLIC HEARINGS:

Date: January 13, 2003

Time: 7:00 - 9:00 p.m.

Place: Miami - Miami Civic Center, 129 5th Street NW, Banquet Room

Date: January 14, 2003

Time: 7:00 - 9:00 p.m.

Place: Tulsa - Tulsa Technology Center, Riverside Campus for Applied Science, Technology and Research, 801 East 91st Street, Alliance Bldg Auditorium, Room A-150

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules will be available to the public at 1801 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105, Room 219.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., 303(D), a rule impact statement is being prepared and will be available for review after December 13, 2002 at the above address for the Oklahoma Department of Wildlife Conservation.

CONTACT PERSON:

Kim Erickson, Chief of Fisheries Division, 405/521-3721 or Rhonda Hurst, APA Liaison, 405/522-6279.

[OAR Docket #02-1417; filed 11-5-02]

**TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 15. COMMERCIAL HARVEST RULES, AQUATIC SPECIES**

[OAR Docket #02-1415]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 15. Commercial Harvest Rules, Aquatic Species [AMENDED]

SUMMARY:

Rules are being proposed to list restricted aquatic species which shall not be propagated or offered for sale, trade, or profit in commercial aquatic operations. Inspection authority and penalties are also defined.

AUTHORITY:

Title 29 O.S., Sections 3-103, 5-401, 6-303.1 and 7-602; Title 2 O.S., Sections 6-311, 6-314 and 6-317; Title 4 O.S.; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so on or before 4:30 p.m., January 3, 2003, at the following address: Oklahoma Department of Wildlife Conservation, Room 219, 1801 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

PUBLIC HEARING:

A public hearing has not been scheduled, however, pursuant to 75 O.S., Section 303(B)(9), "persons may demand a hearing" by contacting Kim Erickson, Chief of Fisheries Division, at the above address or by calling 405/521-3721 no later than 4:30 p.m. January 3, 2003.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules will be available to the public at 1801 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105, Room 219.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., 303(D), a rule impact statement is being prepared and will be available for review after December 13, 2002 at the above address from the Oklahoma Department of Wildlife Conservation.

CONTACT PERSON:

Kim Erickson, Chief of Fisheries Division, 405/521-3721 or Rhonda Hurst, APA Liaison, 405/522-6279.

[OAR Docket #02-1415; filed 11-5-02]

**TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 25. WILDLIFE RULES**

[OAR Docket #02-1413]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 25. Wildlife Rules [AMENDED]

SUMMARY:

The proposed rule amendments are designed to better manage the various wildlife species such as deer and rabbit, increase hunting opportunity on COE property and several Wildlife Management Areas, improve hunter safety, create a three day special use permit for nonhunting activities, allow for annual payments incentive for habitat improvements on private land, and simplify requirements for checking elk.

AUTHORITY:

Title 29 O.S., Sections 3-103, 4-136 (HB 2150), 5-401; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so on or before 4:30 p.m., January 17, 2003, at the following address: Oklahoma Department of Wildlife Conservation, Room 219, 1801 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

PUBLIC HEARINGS:

Date: January 13, 2003

Time: 7:00pm

Place: **McAlester** - Kiamichi Technology Center, Hwy 69 South of Hwy 270, McAlester

Lawton - Public Library, 110 SW 4th, Lawton

Date: January 14, 2003

Time: 7:00pm

Place: **Ada** - Pontotoc County Technology Center, 601 W. 33rd, Ada

Enid - Fire Department, 301 W. Owen K. Garriot, Enid

Notices of Rulemaking Intent

Idabel - Kiamichi Technology Center, 2 mi. north on Hwy 70, Idabel

Oklahoma City - Department of Wildlife Auditorium, 1801 N. Lincoln, OKC

Okmulgee - East Central Electric Coop Building on Hwy 75 South, Okmulgee

Tulsa - Broken Arrow Technology Center, E Base Room, 4600 S. Olive, 129th E. Ave. and 111th Street, Tulsa

Date: January 16, 2003

Time: 7:00pm

Place: **Canute** - Heritage Center, 4-way stop, Canute

Woodward - Northwest Electric, 2925 Williams Ave., Woodward

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules will be available to the public at 1801 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105, Room 219.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., 303(D), a rule impact statement is being prepared and will be available for review after December 13, 2002 at the above address for the Oklahoma Department of Wildlife Conservation.

CONTACT PERSON:

Alan Peoples, Chief of Wildlife Division, 405/521-2739 or Rhonda Hurst, APA Liaison, 405/522-6279.

[OAR Docket #02-1413; filed 11-5-02]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 25. WILDLIFE RULES

[OAR Docket #02-1414]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 25. Wildlife Rules [AMENDED]

SUMMARY:

The proposed rule amendments are designed to allow for maximum controlled public access for wildlife activities in accordance with the Memorandum of Understanding with the Oklahoma Army National Guard on Camp Gruber and to establish requirements for the importation of animals in the family Cervidae that will protect our native deer and elk population from the threat of chronic wasting disease.

AUTHORITY:

Title 29 O.S., Sections 3-103, 5-401; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so on or before 4:30 p.m., January 3, 2003, at the following address: Oklahoma Department of Wildlife Conservation, Room 219, 1801 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

PUBLIC HEARING:

A public hearing has not been scheduled, however, pursuant to 75 O.S., Section 303(B)(9), "persons may demand a hearing" by contacting Alan Peoples, Chief of Wildlife Division, at the above address or by calling 405/521-2739 no later than 4:30 p.m. January 3, 2003.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules will be available to the public at 1801 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105, Room 219.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., 303(D), a rule impact statement is being prepared and will be available for review after December 13, 2002 at the above address for the Oklahoma Department of Wildlife Conservation.

CONTACT PERSON:

Alan Peoples, Chief of Wildlife Division, 405/521-2739 or Rhonda Hurst, APA Liaison, 405/522-6279.

[OAR Docket #02-1414; filed 11-5-02]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 30. DEPARTMENT OF WILDLIFE LANDS MANAGEMENT

[OAR Docket #02-1411]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 30. Department of Wildlife Lands Management [AMENDED]

SUMMARY:

The proposed rule amendments are designed to protect sensitive wetlands from air driven water craft, reduce possible hunting and nonhunting public conflicts, and allow additional hunting opportunity on a Wildlife Management Area.

AUTHORITY:

Title 29 O.S., Sections 3-103, 5-401; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so on or before 4:30 p.m., January 17, 2003, at the following address: Oklahoma Department of Wildlife Conservation,

Room 219, 1801 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

PUBLIC HEARINGS:

Date: January 13, 2003

Time: 7:00pm

Place: **McAlester** - Kiamichi Technology Center, Hwy 69 South of Hwy 270, McAlester

Lawton - Public Library, 110 SW 4th, Lawton

Date: January 14, 2003

Time: 7:00pm

Place: **Ada** - Pontotoc County Technology Center, 601 W. 33rd, Ada

Enid - Fire Department, 301 W. Owen K. Garriot, Enid

Idabel - Kiamichi Technology Center, 2 mi. north on Hwy 70, Idabel

Oklahoma City - Department of Wildlife Auditorium, 1801 N. Lincoln, OKC

Okmulgee - East Central Electric Coop Building on Hwy 75 South, Okmulgee

Tulsa - Broken Arrow Technology Center, E Base Room, 4600 S. Olive, 129th E. Ave. and 111th Street, Tulsa

Date: January 16, 2003

Time: 7:00pm

Place: **Canute** - Heritage Center, 4-way stop, Canute

Woodward - Northwest Electric, 2925 Williams Ave., Woodward

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules will be available to the public at 1801 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105, Room 219.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., 303(D), a rule impact statement is being prepared and will be available for review after December 13, 2002 at the above address for the Oklahoma Department of Wildlife Conservation.

CONTACT PERSON:

Alan Peoples, Chief of Wildlife Division, 405/521-2739 or Rhonda Hurst, APA Liaison, 405/522-6279.

[OAR Docket #02-1411; filed 11-5-02]

**TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 30. DEPARTMENT OF WILDLIFE LANDS MANAGEMENT**

[OAR Docket #02-1412]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 30. Department of Wildlife Lands Management [AMENDED]

SUMMARY:

The proposed rule amendments are to clarify and delete unnecessary language in accordance with the Memorandum of Understanding with the Oklahoma Army National Guard on Camp Gruber.

AUTHORITY:

Title 29 O.S., Sections 3-103, 5-401; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so on or before 4:30 p.m., January 3, 2003, at the following address: Oklahoma Department of Wildlife Conservation, Room 219, 1801 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

PUBLIC HEARING:

A public hearing has not been scheduled, however, pursuant to 75 O.S., Section 303(B)(9), "persons may demand a hearing" by contacting Alan Peoples, Chief of Wildlife Division, at the above address or by calling 405/521-2739 no later than 4:30 p.m. January 3, 2003.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

Copies of the proposed rules will be available to the public at 1801 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105, Room 219.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., 303(D), a rule impact statement is being prepared and will be available for review after December 13, 2002 at the above address for the Oklahoma Department of Wildlife Conservation.

CONTACT PERSON:

Alan Peoples, Chief of Wildlife Division, 405/521-2739 or Rhonda Hurst, APA Liaison, 405/522-6279.

[OAR Docket #02-1412; filed 11-5-02]

Gubernatorial Approvals

Upon notification of approval by the Governor of an agency's proposed PERMANENT rulemaking action, the Office of Administrative Rules (OAR) publishes a notice of such gubernatorial approval in the *Register*.
For additional information on gubernatorial approvals, see 75 O.S., Section 303.2.

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH

[OAR Docket #02-1422]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 3. General Operation and Procedures

310:2-3-5 ~~Obtaining copies~~ Access to Agency records pursuant to the Open Records Act [AMENDED]

Subchapter 7. Additional Procedures for Administrative Penalty Proceedings

Part 1. Environmental Health Penalties

310:2-7-3 Determining penalty [AMENDED]

GUBERNATORIAL APPROVAL:

October 29, 2002

[OAR Docket #02-1422; filed 11-5-02]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 605. ADULT DAY CARE CENTERS

[OAR Docket #02-1421]

RULEMAKING ACTION:

Gubernatorial approval

RULES:

Subchapter 1. General Provisions

310:605-1-2 [AMENDED]

Subchapter 7. Organization and Administration

310:605-7-2 [AMENDED]

310:605-7-4 [AMENDED]

310:605-7-5 [AMENDED]

Subchapter 9. Admissions and Discharges

310:605-9-1 [AMENDED]

310:605-9-2 [AMENDED]

Subchapter 11. Staffing Requirements

310:605-11-1 [AMENDED]

310:605-11-2 [AMENDED]

310:605-11-3 [AMENDED]

310:605-11-4 [AMENDED]

310:605-11-5 [AMENDED]

Subchapter 13. Services

310:605-13-1 [AMENDED]

310:605-13-2 [AMENDED]

310:605-13-3 [AMENDED]

Subchapter 15. Physical Facility

310:605-15-1 [AMENDED]

310:605-15-2 [AMENDED]

310:605-15-3 [AMENDED]

310:605-15-5 [AMENDED]

310:605-15-6 [AMENDED]

310:605-15-7 [AMENDED]

310:605-15-8 [AMENDED]

GUBERNATORIAL APPROVAL:

October 29, 2002

[OAR Docket #02-1421; filed 11-5-02]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 10. PHYSICIANS AND SURGEONS

[OAR Docket #02-1437]

RULEMAKING ACTION:

Gubernatorial approval.

RULES:

Subchapter 4. Application and Examination Procedures for
Licensure as Physician
and Surgeon

435:10-4-4. Application procedure [AMENDED]

435:10-4-5. Additional requirements for foreign applicants
[AMENDED]

GUBERNATORIAL APPROVAL:

October 30, 2002

[OAR Docket #02-1437; filed 11-6-02]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 15. PHYSICIAN ASSISTANTS

[OAR Docket #02-1438]

RULEMAKING ACTION:

Gubernatorial approval.

RULES:

Subchapter 1. General Provisions

435:15-1-1.1. Definitions [AMENDED]

Gubernatorial Approvals

GUBERNATORIAL APPROVAL:

October 30, 2002

[OAR Docket #02-1438; filed 11-6-02]

**TITLE 435. STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION
CHAPTER 45. RESPIRATORY CARE
PRACTITIONER**

[OAR Docket #02-1439]

RULEMAKING ACTION:

Gubernatorial approval.

RULES:

Subchapter 1. Administration and Organization
435:45-1-2. Definitions [AMENDED]

GUBERNATORIAL APPROVAL:

October 30, 2002

[OAR Docket #02-1439; filed 11-6-02]

**TITLE 435. STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION
CHAPTER 55. LICENSED ORTHOTISTS
AND PROSTHETISTS AND REGISTERED
TECHNICIANS AND ASSISTANTS**

[OAR Docket #02-1440]

RULEMAKING ACTION:

Gubernatorial approval.

RULES:

Subchapter 5. Annual Renewal/Continuing Education
435:55-5-2. Requirements for renewal of license
[AMENDED]
435:55-5-3. Continuing education requirements for
renewal [AMENDED]

GUBERNATORIAL APPROVAL:

October 30, 2002

[OAR Docket #02-1440; filed 11-6-02]

Withdrawn Rules

An agency may withdraw proposed PERMANENT rules prior to final adoption (approval by Governor/Legislature) by notifying the Governor and the Legislature and by publishing a notice in the *Register* of such a withdrawal.

An agency may withdraw proposed EMERGENCY rules prior to approval/disapproval by the Governor by notifying the Governor, the Legislature, and the Office of Administrative Rules. The withdrawal notice is not published in the *Register*, however, unless the agency published a Notice of Rulemaking Intent in the *Register* before adopting the EMERGENCY rules.

For additional information on withdrawal of proposed rules, see 75 O.S., Section 308(F) and 253(K) and OAC 655:10-7-33.

**TITLE 310. OKLAHOMA STATE
DEPARTMENT OF HEALTH
CHAPTER 2. PROCEDURES OF THE STATE
DEPARTMENT OF HEALTH**

[OAR Docket #02-1396]

RULEMAKING ACTION:

Withdrawal of EMERGENCY rulemaking

WITHDRAWN RULES:

Subchapter 3. General Operation and Procedures
310:2-3-5 ~~Obtaining copies~~ Access to Agency records
pursuant to the Open Records Act [AMENDED]

DATES:

Adoption:

September 19, 2002

Submitted to Governor:

September 27, 2002

Submitted to House:

September 27, 2002

Submitted to Senate:

September 27, 2002

Withdrawn:

October 28, 2002

[OAR Docket #02-1396; filed 10-28-02]

Emergency Adoptions

An agency may adopt new rules, or amendments to or revocations of existing rules, on an emergency basis if the agency determines that "an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency [action]. . . . [A]n agency may promulgate, at any time, any such [emergency] rule[s], provided the Governor first approves such rule[s]" [75 O.S., Section 253(A)].

An emergency action is effective immediately upon approval by the Governor or on a later date specified by the agency in the preamble of the emergency rule document. An emergency rule expires on July 15 after the next regular legislative session following promulgation, or on an earlier date specified by the agency, if not already superseded by a permanent rule or terminated through legislative action as described in 75 O.S., Section 253(H)(2).

Emergency rules are not published in the *Oklahoma Administrative Code*; however, a source note entry, which references the *Register* publication of the emergency action, is added to the *Code* upon promulgation of a superseding permanent rule or expiration/termination of the emergency action.

For additional information on the emergency rulemaking process, see 75 O.S., Section 253.

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 30. PLANT INDUSTRY

[OAR Docket #02-1403]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 21. Organic Food
35:30-21-1 [REVOKED]
35:30-21-1.1 [NEW]
35:30-21-2 through 35:30-21-4 [REVOKED]

AUTHORITY:

2 O.S. 2001 §§ 2-4(2) and 5-301 et seq.; Oklahoma State Board of Agriculture

DATES:

Adoption:

September 24, 2002

Approved by Governor:

October 29, 2002

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2003, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

Incorporated standards:

National Organic Program Standards, as codified at 7 C.F.R. § 205.1 et seq. (2000)

Incorporating rules:

35:30-21-1.1

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday, Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma

FINDING OF EMERGENCY:

The promulgation of an emergency rule is necessary in order to bring Oklahoma's Organic Food Program into compliance with the Federal standards within the timeframe allotted by the Federal regulation. Oklahoma's Organic Food Program provides requirements for certification, production, handling, and marketing of organic foods. The continuation of the program is essential to Oklahoma's organic food industry. Therefore, a compelling public interest requires amending Oklahoma's organic food rules to conform to the new Federal standards.

ANALYSIS:

The purpose of the proposed rule is to update Oklahoma's organic food rule in order to meet the new Federal standards on organic foods and organic food certification. This rule is needed to promote the continued growth and economic development of the organic food industry of Oklahoma.

CONTACT PERSON:

Billy Klein, (405) 522-5898

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D):

SUBCHAPTER 21. ORGANIC FOOD

35:30-21-1. Definitions [REVOKED]

~~The following words or terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:~~

~~"Allelochemic" means a naturally occurring substance significant to organisms of a species different from that of its source, for reasons other than food.~~

~~"Farm" means agricultural land leased, owned, or held by and under the management of a certified producer or applicant for certification.~~

~~"Farm unit" means all agricultural land in a contiguous tract leased, owned, or held by and under the management of a certified producer or applicant for certification.~~

~~"Field" means a tract of agricultural land leased, owned, or held by and under the management of a certified producer or applicant for certification.~~

~~"Manuring" means the application to soil of the excreta of agricultural animals, including stable litter and paunch wastes, or the plowing under of uncomposted plants (green manure crops) to increase tilth and fertility.~~

~~"Pheromone" means a substance secreted by an organism to the outside and causes a specific reaction in a receiving organism of the same species.~~

~~"Raw manure" means the excrement of livestock, both solid and liquid, that has not been aged, aerated, composted, fermented, aerobically digested, or humified or processed in a way which improves its value as a biological activator.~~

~~"Semiochemical" means a pheromone, allelochemic, or other naturally occurring substance involved in the chemical interaction between organisms.~~

Emergency Adoptions

35:30-21-1.1. Organic Program Provisions

The State Board of Agriculture adopts the National Organic Program Standards, as codified at 7 C.F.R. § 205.1 *et seq.* (2000).

35:30-21-2. Crop management, fertility practices

[REVOKED]

~~(a) **Conformity to recognized organic practices.** Plant materials, irrigation, and pest controls shall conform to recognized organic practices.~~

~~(b) **Seeds and plant materials.** All propagation materials shall be produced without synthetic pesticides.~~

~~(1) A producer may use the following:~~

~~(A) organically produced or untreated seeds and seedlings;~~

~~(B) nontoxic seed treatments like hot water;~~

~~(C) legume inoculants; or~~

~~(D) fungicide-free pelletization.~~

~~(2) A producer shall not use the following:~~

~~(A) synthetic fungicides, pesticides, or soil fumigants on any seedlings or plant materials grown on farm for organic production; or~~

~~(B) materials or practices that are prohibited elsewhere in this section, on seeds or seedlings~~

~~(c) **Irrigation.**~~

~~(1) If irrigation is utilized, the initial application for certification shall include residue analyses of the water for the presence of prohibited substances.~~

~~(2) As a condition of recertification, a producer with a demonstrated water residue problem shall:~~

~~(A) retest for prohibited substances the following year, and~~

~~(B) submit tissue test results for at least one edible crop each year until no prohibited residue from water is found in the crop, and at least every third year.~~

~~(3) Use of irrigation water known to be contaminated with prohibited substances is not permitted.~~

~~(d) **Weed control.**~~

~~(1) For weed control, a producer may use: timely mechanical or hand cultivation; crop rotations; smother crops; mulching with organic materials or plastic mulches; mowing; cleaning equipment; electrical or flame weeding; biological agents and/or preparations; and grazing.~~

~~(2) For weed control, a producer shall not use: synthetically compounded or petroleum distillate herbicides; or synthetic growth regulators or nutrients at toxic levels to kill weeds.~~

~~(e) **Pest control.**~~

~~(1) For pest control, a producer may use the following:~~

~~(A) mechanical or electrical controls, including traps, repellent crops or apparatus vacuuming, water jets, and physical barriers;~~

~~(B) biological controls, like release of natural predators and parasites and manipulation of the habitat, supplemental feeding, or management of hosts to maintain a viable population of natural predators and parasites;~~

~~(C) soaps, rock powders and diatomaceous earth, herbal preparations, dormant or summer oil sprays, and solutions of pureed arthropods or plants;~~

~~(D) microbial and viral pathogenic agents like *Bacillus thuringiensis*, if petroleum-based synergists are not used in the formulation;~~

~~(E) pheromones used in traps and as mating disruptives;~~

~~(F) semiochemicals and allelochemicals, for the direct or indirect management of pests;~~

~~(G) botanical insecticides like pyrethrum, rotenone, nicotine, sulfate quassia and ryania.~~

~~(2) For pest control, a producer shall not use the following:~~

~~(A) synthetically compounded pesticides;~~

~~(B) natural poisons that have long-term effects and persist in the environment, like arsenic or other lead salts.~~

~~(f) **Disease control.**~~

~~(1) For disease control, a producer may use:~~

~~(A) herbal or plant derived controls and mineral preparations like bordeaux mixture, copper sulfate, elemental and liquid sulfur, and lime sulfur.~~

~~(B) chlorine bleach in dilute solutions as a disinfectant.~~

~~(2) A producer shall not use antibiotics, synthetic fungicides, fumigants, synthetic sterilizing agents, or synthetic bactericidal agents for pest control.~~

~~(g) **Manuring.**~~

~~(1) Raw manure may be applied to crops for human consumption, if the crop is harvested 120 days or more following the most recent application.~~

~~(2) The Board may require that the soil and subsoil of all fields, receiving substantial amounts of manure from off farm sources, be tested for heavy metals, pesticides, or other suspected contaminants.~~

~~(h) **Nitrogen.**~~

~~(1) A producer may use as a source of nitrogen: green manures, nitrogen fixing or cover crops, composted materials, nitrogen fixing microorganisms, vegetable meals, hides, blood meal, or meals made of other animal by products and fish emulsion.~~

~~(2) A producer shall not use as a source of nitrogen: anhydrous ammonia, ammonium nitrate, urea, sewage sludge, contaminated organic materials, or mined or synthetic sources of soluble nitrates.~~

~~(i) **Phosphorus.**~~

~~(1) A producer may use as a source of phosphorus: colloidal, soft rock, and hard rock phosphate; bone meal; guano; food-grade orthophosphoric acid in foliar formulations and fishemulsion processing; soap phosphates, or basic slag.~~

~~(2) A producer shall not use as a source of phosphorus ordinary or triple superphosphate or other highly soluble and/or acidifying materials with a high salt content.~~

~~(j) **Potassium.**~~

~~(1) A producer may use as a source of potassium: wood ashes; rock dusts (granite, feldspar, greensand); sulfate of~~

potash magnesia (langbeinite); natural potassium sulfate; kainite; fly ash; and recycled potassium rich organic matter.

(2) A producer shall not use as a source of potassium: muriate of potash (potassium chloride) or other sources with high solubility, high salt or chloride content.

(k) **Calcium.**

(1) A producer may use as a source of calcium: agricultural limestone; agricultural gypsum (hydrated calcium sulfate); kiln dust; calcified seaweed; corn calcium; calcium oxide; calcium chloride based foliar materials; and ground oyster shell.

(2) A producer shall not use as a source of calcium: quicklime; or slaked or hydrated lime.

(l) **Magnesium.** A producer may use as a source of magnesium: dolomitic limestone; kieserite; sulfate of potash magnesia (langbeinite); and Epsom salts (hydrated magnesium sulfate).

(m) **Sulfur.** A producer may use a soil application of elemental sulfur from mined sources.

(n) **Micronutrients.**

(1) A producer may use as a source of micronutrients: liquid or powdered seaweed extract not chemically fortified; kelp meal; rock powders; fritted trace elements or chelated minerals; acid treated (sulfate or oxide) zinc; boron, copper, iron, manganese, or molybdenum; or fish emulsions.

(2) A producer shall not use chemically fortified liquid or powdered seaweed extract as a source of micronutrients.

(o) **Growth regulators, growth promoters, activators, inoculants.** A producer may use the following:

- (1) natural cytokinin formulations like dry or liquid seaweed extract;
- (2) natural enzymes;
- (3) herbal preparations;
- (4) biodynamic preparations;
- (5) rhizobial inoculants;
- (6) free living nitrogen fixing bacteria or other microbial cultures;
- (7) blue green algae;
- (8) cellulolytic bacteria;
- (9) natural rooting hormones;
- (10) humates; or
- (11) adjuvants and wetting agents for foliar applications.

(p) **Prohibited growth regulators, growth promoters, activators, inoculants.** A producer shall not use:

- (1) synthetic growth promoters; or
- (2) synthetic growth regulators.

35:30-21-3. Certification, transitional periods [REVOKED]

(a) The Board shall certify whole farms, farm units, or individual fields as organically productive.

(b) An applicant for certification for organically produced crops shall submit on forms provided by the Board a detailed

three-year farm plan to the Board for review. This plan shall include:

- (1) a three year rotation and nutrient stabilization plan for each field under organic management;
- (2) a 25 foot buffer zone separating land managed organically from other cultivated agricultural land;
- (3) crop and pesticide application practices for each non organically managed field located adjacent to an organically managed field.

(c) Any organically grown crop which was produced within 50 feet of a field which had a prohibited pesticide applied, shall be assayed for residues before harvest.

(d) An applicant for certification shall submit water and soil residue assay results to establish a base line for the presence of synthetic pesticides and/or other regulated substances prior to certification. If contamination is suspected, an applicant may also be required to test for the presence of prohibited pesticides in water and plant tissue.

(e) The Board may certify land as organically managed if it can be determined by documentation and affidavit that recognized organic practices have been followed for the previous three years.

(f) Producers of plant crops who have met all requirements for certification except passage of the required three year transitional period may market their produce under an Oklahoma Department of Agriculture transitional license.

(g) If any part of a certified field or farm unit is taken out of organic management, it may be recertified by meeting the qualifications listed for transitional certification.

35:30-21-4. Recordkeeping, separation of produce [REVOKED]

(a) The following records shall be kept for each farm, farm unit, field, or other production unit for which application for certification is made:

- (1) field-by-field fertilization, cropping, and pest management histories; and
- (2) if a crop is produced from more than one field, records shall show the lot, bin, or shipment numbers and dates indicating the field of origin.

(b) A producer of both organic produce and other produce on the same farm shall keep separate records for each of these categories.

(c) A producer of both organic and nonorganic crops on the same farms shall have physical facilities and management procedures adequate to ensure that there is no possibility of crop mixing or commingling. In the absence of this proof, no food of that type from that farm shall be certified or sold as Oklahoma Department of Agriculture Certified Organic.

[OAR Docket #02-1403; filed 11-1-02]
(format accepted 11-7-02)

TITLE 87. OKLAHOMA STATE EMPLOYEES BENEFITS COUNCIL CHAPTER 10. FLEXIBLE BENEFITS PLAN

[OAR Docket #02-1402]

RULEMAKING ACTION:

EMERGENCY adoption.

RULES:

Subchapter 17. Benefit Plan Election

87:10-17-4 [AMENDED]

Subchapter 25. Dependent Care Reimbursement Account Option

87:10-25-13 [AMENDED]

Subchapter 27. Health Care Reimbursement Account Option

87:10-27-12 [AMENDED]

AUTHORITY:

Employees Benefits Council; Employees Benefits Act, 74 O.S. 1361 et seq.

DATES:

Adoption:

September 24, 2002

Approved by Governor:

October 25, 2002

Effective:

January 1, 2003

Expiration:

Effective through July 14, 2003, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The Employees Benefit Council has found that a compelling public interest requires the emergency rule changes contained herein. Pronouncements from the U.S. Treasury Department allow participants in a cafeteria plan to make certain changes to their benefit plan elections during the Plan Year. Two of these changes must be adopted before January 2003 so all participants can gain the advantages of the changes during the entire Plan Year 2003. Waiting for these changes to be adopted via the permanent rulemaking process would delay implementation and would preclude participants from using these rules during the first few months of 2003. These changes are not controversial. They allow state employees who participate in the Dependent Care Reimbursement Account (DCRA) program, administered by the Employees Benefits Council, to alter their initial elections in the event they experience midyear changes in cost or coverage. The proposed rules will strengthen the families of state employees by giving DCRA participants greater flexibility and better equipping them to care for dependent children and the elderly.

ANALYSIS:

As a general rule, changes to elections that participants make with respect to their employee benefits (e.g. health, life, dental, health care reimbursement accounts, and dependent care reimbursement accounts) offered in a cafeteria plan, as defined by Internal Revenue Code Section 125, cannot be changed during the Plan Year. Certain exceptions to this rule are permissible under the Treasury Regulations (Regulations) that govern cafeteria plans if the plan administrator wishes to adopt them. 26 CFR §1.125-4. The proposed rule changes presented herein amend Chapter 10 of Title 87 of the Oklahoma Administrative Code to clarify the circumstances in which participants can make midyear changes to their Dependent Care Reimbursement Account (DCRA) plans administered by the Oklahoma State Employees Benefits Council. The proposed rules allow DCRA participants to make midyear changes to their initial DCRA elections due to significant changes in cost or changes in coverage.

If the cost charged to an employee for a benefit package option significantly increases or significantly decreases during a period of coverage, the cafeteria plan may permit the employee to make a corresponding change in election under the cafeteria plan. 26 CFR §1.125-4(f)(2)(ii). Such changes can be made to DCRA accounts only if the cost of the change is imposed by a dependent care provider who is not a relative of the employee. 26 CFR §1.125-4(f)(2)(iv). For example, if, after an employee has elected an amount to contribute into a DCRA at the beginning of the Plan Year, the employee increases the amount being paid to a childcare provider (who is not a relative of the employee), the cafeteria plan may permit the employee to make a corresponding increase

in the amount contributions going into the DCRA. 26 CFR §1.125-4(f)(6), Example 7.

Cafeteria plans are permitted to allow participants to make changes if they experience a change in coverage. Changing elections in one's DCRA is also permissible due to midyear changes in coverage. Such changes can be made to DCRA accounts whether the new dependent care provider is a household employee, family member, or a person who is independent of the participant. 26 CFR §1.125-4(f)(6), Example 5. For example, a participant's desire to change childcare providers is a significant change in coverage similar to a benefit package option becoming available. Therefore, cafeteria plans may permit participants to make a new DCRA contribution election to reflect the cost of the new childcare provider. 26 CFR §1.125-4(f)(6), Example 5. The reasons for the change could presumably vary and include concern about a center's administration, staff quality, or staff turnover; the desire to consolidate siblings at one center; movement of a child from a temporary center while wait-listed for a preferred center and a position opens; the desire to move the child to a new, state-of-the-art facility; a change in participant's residence or work location that makes a new center more convenient; or a child's movement to a new center because of the child's unsafe behavior. Furthermore, a change in the DCRA elections are permitted if the hours of necessary childcare change during the Plan Year. Thus, the cafeteria plan may permit participants to reduce a previous election under the DCRA. 26 CFR §1.125-4(f)(6), Example 6. Cost and coverage changes do not apply to Health Care Reimbursement Accounts.

CONTACT PERSON:

Russell D. Nash (405) 232-1190 ext.105

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S. SECTION 253(D), WITH A LATER EFFECTIVE DATE OF JANUARY 1, 2003:

SUBCHAPTER 17. BENEFIT PLAN ELECTION

87:10-17-4. Changes to benefit elections

(a) A participant may change an election only in accordance with the provisions of this Plan. This Section does not remove the requirement that every employee must enroll in at least the basic plan of coverage.

(b) All requests for changes submitted to the Plan Administrator must be in a format as determined by the Plan Administrator.

(c) Provided that all other eligibility requirements are met, and written or electronic notice is provided to the Plan Administrator within thirty (30) days of a qualifying event, including receipt of a Qualified Medical Child Support Order, the effective date of such change of benefits coverage will be the first of the month following receipt of acceptable notice as determined by the Plan Administrator as long as the correct premium is paid. All enrollments and elections are for the entire Plan Year and are irrevocable during same Plan Year unless a change is requested based on one of the following permitted exceptions to the irrevocability rule. Only the permitted exceptions provided for in this chapter shall be allowed as changes to benefits elections unless those changes are prohibited under the Premium Conversion Option, the Dependent Care Reimbursement Account Option or the Health Care Reimbursement Account Option as provided for in subchapters 23, 25, and 27 respectively. All changes shall become effective on a prospective basis and not earlier than the first day of the month following

receipt of acceptable notice of the requested change which must be on account of and corresponding with the event. Permitted exceptions to the irrevocability rule as allowed within Plan guidelines are as follows:

- (1) HIPAA Special Enrollment Rights (marriage, birth, adoption or placement for adoption, loss of other coverage including exhaustion of COBRA coverage)
 - (2) Change in Employee's Legal Marital Status
 - (3) Change in the Number of Employee's Dependents
 - (4) Change in Employment Status of Employee, Spouse or Dependent that affects eligibility
 - (5) Event Causing Employee's Dependent to satisfy or cease to satisfy Eligibility Requirements
 - (6) Change in Place of Residence of Employee, Spouse or Dependent
 - (7) Commencement or Termination of Adoption Proceedings
 - (8) Judgments, Decrees or Orders (changes allowed only to Health, Health Care Reimbursement Account and Dental)
 - (9) Medicare or Medicaid (changes allowed only to Health and Health Care Reimbursement Account)
 - (10) Significant Change in Cost-Increase or a Change in Coverage (changes allowed only to Dependent Care Reimbursement Account)
 - (11) Changes in Coverage of Spouse or Dependent under Other Employer's Plan
 - (12) FMLA Leave
 - (13) Such other events, which may permit such modification or election under the IRS consistency rule as found in Treasury Regulations 1.125-4 and in accordance with other applicable and prevailing Internal Revenue Code regulations promulgated thereunder, and in accordance with this chapter.
- (d) The following are the only permitted exceptions that may become effective on a retroactive basis beginning the first day of the event month. Such events require receipt of acceptable notice by the Plan Administrator or its designee within thirty (30) days of the event:
- (1) Newborn children who may be covered from the first of the birth month provided the proper documentation is submitted within thirty (30) days of the birth event and provided that the full monthly premium is paid.
 - (2) Adopted eligible dependent children, those placed for adoption, and eligible children for whom guardianship has been newly granted to the insured or to the insured's spouse and for whom coverage may begin from the first day of physical custody even though a full month's premium must be paid; or at the insured's option may be covered beginning the first of the month following placement.
- (e) Termination of coverage for a spouse and/or dependents who have ceased to satisfy eligibility as a result of divorce, death or attaining a specified age shall become effective on the first of the month following the date of the event.
- (f) The Plan Administrator reserves the right to make any corrections necessary if an error was made regarding the effective date.

SUBCHAPTER 25. DEPENDENT CARE REIMBURSEMENT ACCOUNT OPTION

87:10-25-13. Benefit election irrevocable unless a permitted exception exists

- (a) A participant's election of benefits described in this Chapter, made in accordance with subchapter 17 of this Chapter, shall be irrevocable during the Plan Year with regard to any benefit or portion of benefit elected for the period of coverage to which the election pertains except in those situations which qualify as permitted exceptions to the irrevocability rule and are not prohibited as changes by the Plan Administrator. Conversion from one type of benefit to another or modification of the salary adjustment agreement shall not be permitted during the applicable period of coverage.
- (b) A participant shall be entitled to modify a benefit election after a period of coverage has commenced for which the election applies or make a new election, subject to acceptance by the Plan Administrator, with respect to the remainder of the current period of coverage, if the modification or new election is on account of and corresponds with a permitted exception to the irrevocability rule as provided for in 87: 10-17-4 and is not a prohibited change as indicated in this subchapter. **THE FOLLOWING ARE PROHIBITED CHANGES UNDER THE DEPENDENT CARE REIMBURSEMENT ACCOUNT OPTION:**
- (1) Significant Changes in Cost Increases—will not be allowed to effect any change to the Dependent Care Reimbursement Account Option if that increase is imposed by a dependent care provider who is a relative of the employee. Otherwise the exception is permitted.
 - (2) HIPAA Special Enrollment Rights will not be allowed to effect any change to the Dependent Care Reimbursement Account (See subchapter 17-4 for Permitted Exceptions)
 - (3) COBRA events will not be allowed to effect any change to the Dependent Care Reimbursement Account
 - (4) Judgments, Decrees, or Orders will not be allowed to effect any change to the Dependent Care Reimbursement Account Option (See subchapter 17-4 for Permitted Exceptions)
 - (5) Neither Medicare nor Medicaid eligibility or loss thereof will be allowed to effect any change to the Dependent Care Reimbursement Account
- (c) The participant shall furnish the Plan Administrator with information and documentation relative to a request for an exception to the irrevocability rule. The Plan Administrator shall determine whether a change in benefit election meets the criteria thereunder and is permitted by the Internal Revenue Code and regulations promulgated there under and is allowed by the Plan.
- (d) The employee must provide a request for an exception in a timely manner that is compliant with the authorized submission procedure established by the Plan Administrator.
- (e) Any request to make a change must be submitted to the Plan Administrator or its designee within 30 days of the event which provides the basis for an exception to the irrevocability rule as provided for in 87:10-17-4 and this subchapter. If the

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request is not submitted via an authorized submission procedure as determined by the Plan Administrator within thirty (30) days of the event, the participant shall waive the option to make changes under this section.

SUBCHAPTER 27. HEALTH CARE REIMBURSEMENT ACCOUNT OPTION

87:10-27-12. Benefit election irrevocable unless a permitted exception exists

(a) Except as otherwise provided in this Section, a participant's election of benefits described in this Chapter, made in accordance with subchapter 17 of this Chapter, shall be irrevocable during the Plan Year with regard to any benefit or portion of benefit elected for the period of coverage to which the election pertains. Conversion from one type of benefit to another or modification of the salary adjustment agreement shall not be permitted during the applicable period of coverage.

(b) A participant shall be entitled to modify a benefit election after a period of coverage has commenced for which the election applies or make a new election, subject to acceptance by the Plan Administrator, with respect to the remainder of the current period of coverage, if the modification or new election is on account of and corresponds with a permitted exception to the irrevocability rule as provided for in 87:10-17-4 and is not a prohibited change as indicated in this subchapter. THE FOLLOWING ARE PROHIBITED CHANGES UNDER THE HEALTH CARE REIMBURSEMENT ACCOUNT OPTION:

- (1) HIPAA Special Enrollment Rights will not be allowed to effect any change to the Health Care Reimbursement Account. (See subchapter 17-4 for Permitted Exceptions)
- (2) COBRA events
- (3) Significant Change in Cost Increases or a Change in Coverage
- (4) Change in coverage of spouse or dependent under Other Employer's plan (See subchapter 17-4 for Permitted Exceptions).

(c) The participant shall furnish the Plan Administrator with information and documentation relative to a request for an exception to the irrevocability rule. The Plan Administrator shall determine whether a change in benefit election meets the criteria thereunder and is permitted by the Internal Revenue Code and regulations promulgated there under and is allowed by the Plan.

(d) The employee must provide a request to make a change via the authorized submission procedure as defined by the Plan Administrator.

(e) Any request to make a change must be signed by the employee and submitted to the Plan Administrator within thirty (30) days of the event described in subsection 17-4 of this document. If the request is not submitted under an authorized procedure and submitted to the Plan Administrator within

thirty (30) days of the event, the participant shall waive the option to make changes under this section.

[OAR Docket #02-1402; filed 10-31-02]
(format accepted 11-6-02)

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 205. HAZARDOUS WASTE MANAGEMENT

[OAR Docket #02-1435]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Incorporation by Reference
252:205-3-3 [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S., §§ 2-2-101, 2-2-201 and 2-7-106

DATES:

Comment period:

June 17, 2002 through July 17, 2002

Public hearing:

July 18, 2002 and September 10, 2002

Adoption:

September 10, 2002

Approved by Governor:

October 31, 2002

Effective:

Effective immediately upon Governor's approval

Expiration:

Effective through July 14, 2003, unless superseded by another rule or disapproved by the legislature.

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

Incorporated standards:

66 Federal Register 58258-58300 published November 20, 2001,
67 Federal Register 2962-3029, published January 22, 2002,
67 Federal Register 11251-11254, published March 13, 2002,
67 Federal Register 17119-17120, published April 9, 2002

Incorporating rules:

252:205-3-3

Availability:

Through the contact person listed below

FINDING OF EMERGENCY:

The Environmental Quality Board finds that a compelling public interest necessitates the seeking of emergency certification of the rules and regulations adopted today.

To avoid discrepancies between federal and state rules that could cause confusion and unnecessary expenses to the regulated community and to allow the Oklahoma hazardous waste program to be equivalent to the Federal hazardous waste program, the Board finds the need to pass these rules on an emergency basis.

Under the terms of the Administrative Procedures Act, unless an emergency is declared and certified, these amendments could not go into effect until June 1, 2003.

ANALYSIS:

The purpose of the proposed amendment to 252:205-3-3 is to incorporate by reference the following new or superseding amendments: 1) 66 FR 58258-58300, published November 20, 2001, regarding three newly listed hazardous wastes generated from inorganic chemical manufacturing processes; 2) 67 FR 2962-3029, published January 22, 2002, regarding amendments to the Corrective Action Management Unit Rule; 3) 67 FR 11251-11254, published March 13, 2002, regarding the classification of mineral processing characteristic sludges and by-products being reclaimed as solid wastes under RCRA's hazardous waste management regulations; and the decision that the Toxicity Characteristic Leaching Procedure may not be used for determining whether manufactured gas plant waste is hazardous under

RCRA; 4) 67 FR 17119-17120, published April 9, 2002, regarding corrections to 66 FR 58258-58300, published November 20, 2001.

CONTACT PERSON:

Catherine Sharp (405) 702-5100, 707 North Robinson, Fifth Floor, Oklahoma City, OK 73102; mailing address is P.O. Box 1677, Oklahoma City, OK 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D).

SUBCHAPTER 3. INCORPORATION BY REFERENCE

252:205-3-3. Subsequent incorporations

The new or superseding amendments to 40 CFR contained in 65 FR 81373-81381, published December 26, 2000, regarding the deferment of the requirements that polychlorinated biphenyls be considered a constituent subject to treatment when they are present in soils that exhibit the Toxicity Characteristic for metals are incorporated by reference. The following new or superseding amendments to 40 CFR are incorporated by reference:

- (1) 66 FR 58258-58300, published November 20, 2001, regarding three newly listed hazardous wastes generated from inorganic chemical manufacturing processes;
- (2) 67 FR 2962-3029, published January 22, 2002, regarding amendments to the Corrective Action Management Unit Rule; and,
- (3) 67 FR 11251-11254, published March 13, 2002, regarding the classification of mineral processing characteristic sludges and by-products being reclaimed as solid wastes under RCRA's hazardous waste management regulations; and the decision that the Toxicity Characteristic Leaching Procedure may not be used for determining whether manufactured gas plant waste is hazardous under RCRA.
- (4) 67 FR 17119-17120, published April 9, 2002, regarding corrections to 66 FR 58258-58300, published November 20, 2001.

*[OAR Docket #02-1435; filed 11-6-02]
(format accepted 11-12-02)*

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 631. PUBLIC WATER SUPPLY OPERATION**

[OAR Docket #02-1436]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. Introduction
252:631-1-2 [AMENDED]

- 252:631-1-3 [AMENDED]
- 252:631-1-4 [AMENDED]
- Subchapter 3. Operations
- 252:631-3-1 [AMENDED]
- 252:631-3-2 [AMENDED]
- 252:631-3-3 [AMENDED]
- 252:631-3-5 [REVOKED]
- 252:631-3-6 [AMENDED]
- 252:631-3-7 [REVOKED]
- 252:631-3-8 [AMENDED]
- 252:631-3-9 [AMENDED]
- 252:631-3-10 [AMENDED]
- 252:631-3-11 [AMENDED]
- 252:631-3-12 [AMENDED]
- 252:631-3-13 [AMENDED]
- 252:631-3-14 [REVOKED]
- 252:631-3-21 [AMENDED]
- 252:631-3-22 [NEW]
- Subchapter 5. Minor Water Sources [NEW]
- 252:631-5-1 [NEW]
- 252:631-5-2 [NEW]
- 252:631-5-3 [NEW]
- 252:631-5-4 [NEW]
- 252:631-5-5 [NEW]

- Appendix A. Primary Drinking Water Standards [REVOKED]
- Appendix B. Monitoring Requirements [REVOKED]
- Appendix C. Public Notice Requirements [REVOKED]

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, and 2-6-303.

DATES:

Comment period:

July 1, 2002 through August 6, 2002 and September 10, 2002

Public hearings:

August 6, 2002 and September 10, 2002

Adoption:

September 10, 2002

Approved by Governor:

October 31, 2002

Effective:

Effective immediately upon Governor's approval

Expiration:

Effective through July 14, 2003, unless superseded by another rule or disapproved by the legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

Incorporated standards:

40 CFR Parts 141 and 143

Incorporated rules:

OAC 252:631-1-3

Availability:

From the contact person

FINDING OF EMERGENCY:

The Environmental Quality Board finds that a compelling extraordinary circumstance necessitates the seeking of emergency certification of the rule being adopted today. EPA made changes to its regulations under the Safe Drinking Water Act that require immediate incorporation by reference in state rules to maintain primacy for the federal program. These federal rule changes further protect the quality of water provided by public water supplies to the citizens of the state and therefore warrant emergency action.

ANALYSIS:

In order to implement state statutes and the federal program, for which DEQ has been awarded primacy, the DEQ must have rules in place. This chapter has been revised to update the rules as directed by EPA in order to ensure that DEQ retains primacy in administering the public water supply system program under the Safe Drinking Water Act. This is accomplished by updating the incorporation by reference of 40 CFR Parts 141 and 143 and the revocation of current rule provisions that are found in these sections. Additionally, changes are proposed to the fee section of the rule in order for the rule to reflect the requirements in state law, 27A O.S. § 2-6-306 by eliminating fee language conflicting with that which already appears in OAC 252:305 "Laboratory Services". Finally, the regulations for minor water systems were grouped together in a new subchapter to ease compliance for minor systems.

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CONTACT PERSON:

Shellie Chard-McClary, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-8100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D).

SUBCHAPTER 1. INTRODUCTION

252:631-1-2. Definitions

In addition to terms defined in Title 27A of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Action level" means the concentration which initiates lead and copper corrective actions in a Public Water Supply system.

"Approved laboratory" means a laboratory certified and or approved by the DEQ to analyze water samples to determine compliance with maximum allowable levels, laboratory approved by EPA, DEQ, or a an EPA approved third party certification program (such as the National Sanitation Foundation, and Drinking Water Accreditation Program). Laboratory approval must be based upon Safe Drinking Water Act requirements and must be specific to each parameter analyzed.

"Compliance cycle" means the nine year calendar year cycle during which Public Water Supply systems must monitor. Each cycle consists of three three year compliance periods, the first of which began January 1, 1993.

"Compliance period" means a three year calendar year period within a compliance cycle.

"Comprehensive performance evaluation" is a thorough review and analysis of a treatment plant's performance based capabilities and associated administrative, operation and maintenance practices.

"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

"Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation and filtration resulting in substantial particulate removal.

"DBP site sampling plan" means a plan to be approved by the DEQ that is to collect four samples of DBPs each quarter from either the same locations as bacteriological samples are collected, with 75% of them from major population areas, or at the farthest point of small systems.

"Disinfection" means a process which that inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

"Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

"Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

"First draw sample" means a one liter sample of tap water that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.

"Groundwater under the direct influence of surface water" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia*, *Lambli*a or (for surface water systems serving at least 10,000 people only) *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which that closely correlate to climatological or surface water conditions.

"Haloacetic acids five (HAA5)" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures.

"Laboratory checks" means chemical, radiochemical, physical and bacteriological, and microbiological tests made in a laboratory accredited approved by the DEQ, on water samples submitted to confirm the quality of the water.

"Large system" means a water system that serves more than 50,000 persons for purposes of lead and copper control.

"Lead service line" means a service line made of lead which connects the water main to the building outlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line.

"Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in a Public Water Supply system which that has been determined to be necessary to safeguard the public health as specified in these regulations. Maximum contaminant levels may also be referred to MCL are the same as primary drinking water standards.

"Maximum residual disinfectant level (MRDL)" means the level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. Compliance with the MRDL will be determined using the disinfectant concentration measured at the time Total Coliform Rule (TCR) samples are collected.

"Medium system" means a water system that serves more than 3,300 persons and less than or equal to 50,000 persons for purposes of lead and copper control.

"Operating records and reports" means the daily record of data connected with the operation of the system compiled in a monthly report.

"Point of entry (POE)" means the point at which a source or combination of sources enters the distribution system.

"Primary Drinking Water Standards" means the same as MCL.

"Protected groundwater free of sanitary defects" means a ground water source which that is properly designed and permitted, practices full-time chlorination, and is properly operated and maintained as evidenced by no critical deficiencies on inspections.

"Public Water Supply (PWS) system" means a system, whether publicly or privately owned, which supplies water under pressure to the public through pipes or other constructed conveyances whether receiving payment for same or not. Multi-family dwellings, which are constructed, inspected, and maintained under State Health Department-approved plumbing code and purchase water from a permitted water system shall, do not provide treatment, and do not resell water, are not be classified as a Public Water Supply system. The following are the categories of Public Water Supply systems:

(A) **"Community water system"** means any PWS system which that serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(B) **"Non-community water system"** means any PWS system which that serves an average of at least twenty-five (25) individuals at least sixty (60) days per year but is neither a community water system nor a non-transient non-community water system.

(C) **"Non-transient non-community (NTNC) water system"** means any PWS system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six months per year.

(D) **"Minor water system"** means any other PWS system not included in (1), (2), or (3) (A), (B), or (C) of this definition. These water systems may be state licensed facilities or non-licensed facilities.

"Residual disinfectant concentration" means the concentration of disinfectant measured in ~~mg/L~~ milligrams per liter (mg/l) in a representative sample of water.

~~"Sanitary survey" means an on site review of the water source, distribution system, treatment facilities, equipment, operation and maintenance of a PWS system for the purpose of evaluating the adequacy for producing and distributing safe drinking water.~~

"Secondary standard" means a non-mandatory guideline which that has been determined to be desirable to provide acceptable drinking water.

~~"Service line sample" means a one liter water sample that has been standing in the service line for at least 6 hours.~~

"Single family structure" means a building constructed as a single family residence that is currently used as a residence or a place of business.

"Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 50 gallons/sq.ft./day) resulting in substantial particulate removal by physical and biological mechanisms.

"Small water system" means a PWS system that serves 3,300 or fewer people.

"Source" means any lake, stream, spring or groundwater supply which that is used as treated or untreated water for a PWS system.

~~"Specific Ultraviolet Absorption (SUVA)" means absorption at 254 nanometers (nm), an indicator of the humic content of a water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of~~

~~254 nm (UV254 in m⁻¹) by its concentration of dissolved organic carbon (DOC in mg/L).~~

~~"TOC" means total organic carbon in mg/L measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.~~

~~"Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a 47 mm diameter membrane filter used for coliform detection.~~

"Total coliform positive sample" means a sample in which one or more coliform organisms are found.

~~"Total trihalomethanes (TTHM)" means the sum of the concentrations in mg/L of the THM compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane and tribromomethane [bromoform]) rounded to two significant figures.~~

"Treatment technique" means the ~~disinfection~~ practice of a PWS system to properly ~~inactivate~~ remove pathogens and total organic carbon.

"Turbidity" means the amount of suspended material in water as measured by Nephelometric Turbidity Units (NTU).

~~"Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.~~

~~"Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a PWS system which is deficient in treatment, as determined by the DEQ.~~

"Water Treatment" means the act of removing contaminants from source water or adjusting water quality by the addition of chemicals, filtration, and other processes, thereby making the water safe for human consumption.

252:631-1-3. Adoption of U.S. EPA regulations by reference

The provisions Parts 141, "National Primary Drinking Water Regulations, and 143, National Secondary Drinking Water Regulations" of Title 40 of the Code of Federal Regulations (CFR) as published on July 1, ~~2000~~ 2002, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety.

252:631-1-4. Use of incorporated federal regulations

(a) As used in the incorporated federal regulations, unless the context clearly indicates otherwise, the term "State" is synonymous with DEQ.

(b) This Chapter implements the federal PWS program. ~~The appendices in this Chapter are intended to make it easier to understand the federal requirements. Any inconsistency between the appendices of this Chapter and the incorporated federal regulations is inadvertent, and the incorporated federal regulations will control.~~

SUBCHAPTER 3. OPERATIONS

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252:631-3-1. PWS criteria

(a) All systems must properly operate and maintain each unit to provide treatment of the water in accordance with the purpose for which the units were designed and according to the terms of their permits. Employees must be trained in the proper operation and maintenance of the system.

~~(b) All systems must meet the drinking water standards set forth in Appendix A.~~

~~(c) All systems must meet the monitoring requirements set forth in Appendix B.~~

(b) Public water supply systems must comply with all applicable Primary Drinking Water Standards in 40 CFR Part 141, which includes, but is not limited to, the following:

(1) Microbiological standards in 40 CFR Section 141.63;

(2) Inorganic chemicals standards in 40 CFR Section 141.11 and Section 141.62;

(3) Organic chemical standards in 40 CFR Section 141.61;

(4) Disinfectant byproduct standards in 40 CFR Section 141.12 and Section 141.64;

(5) Radiochemical standards in 40 CFR Section 141.15 and Section 141.16;

(6) Turbidity standards in 40 CFR Section 141.13; and

(7) Residual disinfectant level standards in 40 CFR Section 141.65

(c) Public water supply systems must comply with all applicable monitoring and analytical requirements in 40 CFR Part 141, which includes, but is not limited to, the following:

(1) Coliform requirements in 40 CFR Section 141.21;

(2) Turbidity requirements in 40 CFR Section 141.22;

(3) Inorganic chemicals requirements in 40 CFR Section 141.23;

(4) Organic chemical requirements in 40 CFR Section 141.24;

(5) Radiochemical requirements in 40 CFR Section 141.25 and Section 141.26;

(6) Total trihalomethane requirements in 40 CFR Section 141.30;

(7) Lead and copper requirements in 40 CFR Section 141, Subpart I;

(8) Unregulated contaminant requirements in 40 CFR Section 141.40;

(9) Sodium requirements in 40 CFR Section 141.41;

(10) Corrosivity requirements in 40 CFR Section 141.42;

(11) Filtration and disinfectant requirements in 40 CFR Section 141.74; and

(12) Disinfectant residuals and disinfectant by-product requirements in 40 CFR, Section 141.30 and 40 CFR Subpart

(d) Systems, which operate on an intermittent or seasonal basis, shall submit bacteriological samples on two consecutive days prior to placing the system into operation. The system can be placed into operation only after the samples are shown to be safe.

252:631-3-2. Laboratory approval

Compliance analyses for coliform, inorganics, organics, radioactivity and corrosivity contaminants ~~shall~~ must be performed in a laboratory ~~certified~~ approved by the EPA or ~~accredited by the DEQ. Laboratory certification must be based upon Safe Drinking Water Act requirements and must be specific to each parameter analyzed.~~ Testing required for compliance with turbidity treatment technique, disinfectant residual, temperature and pH requirements may be performed by a laboratory operator certified by the DEQ. Process control tests may be performed by a laboratory operator certified by the DEQ. The DEQ may approve a laboratory for the purposes of testing for compliance with primary drinking water standards upon written submittal of a request for approval from the owner of the laboratory and upon proof satisfactory to the DEQ that the laboratory:

(1) possesses sufficient personnel, equipment, and facilities; ~~and~~

(2) implements an adequate quality control and quality assurance program;

(3) owns and will continue to own sufficient managerial and financial resources to continuously comply with and implement all requirements of "Standard Methods for the Examination of Water and Wastewater" in accordance with the current "Manual for the Certification of Laboratories Analyzing Drinking Water;" and

(4) ~~transmit~~ transmits the analyses to the ~~State Environmental Laboratory (SEL)~~ DEQ in an electronic form acceptable to the ~~SEL~~ DEQ.

252:631-3-3. ~~Need for full-time disinfection~~ Disinfection requirements

~~(a) Chlorine.~~

~~(1a) Mandatory chlorination-disinfection.~~ Full-time ~~chlorination-disinfection~~ disinfection is mandatory for:

~~(A1) a surface water, groundwater under the direct influence of surface water, and spring water supply, such as a lake, reservoir, stream or spring supplies, unless an alternative has been approved by the DEQ. Each system must provide disinfection in accordance with 40 CFR Sections 141.72(b) and 141.74(c);~~

~~(B2) a groundwater supply system-supplies or purchase water systems whenever the record of bacteriological tests of the system does not indicate a safe water supply under the criteria listed in Appendix A, Bacteriological-show;~~

~~(A) a persistent presence of Total Coliform; or~~

~~(B) a verified Fecal Coliform, or E. Coli MCL exceedance~~

~~(C3) any new well in a system where the initial bacteriological tests of the well do not show a safe record with the DEQ for two (2) consecutive days after completion and testing of the well.~~

(2b) Modification of disinfection methods. When any change in the disinfection process is contemplated, contact the DEQ. Submittal of an application, including plans, specifications ~~and~~ engineering reports, disinfection profile and disinfection benchmark justifying such a change may be required in order to obtain approval from the DEQ.

- (c) **Chlorine.**
- (1) The minimum free chlorine residual at the most distant points in a water distribution system must be 0.2 mg/l.
 - (2) Free chlorine residuals must be at least 1.0 milligram per liter at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.
- (~~b~~d) **Chloramines.**
- (1) **Prior public notice.** Systems must notify all users of kidney dialysis machines at least one month before introducing chloramines into the distribution system or starting chloramination.
 - (2) **Chloramines engineering study.** Before changing to chloramines as the residual disinfectant in the distribution system, the system must conduct and submit to the DEQ for approval an engineering study and weekly analyses for at least six (6) weeks prior to and quarterly for one year following such a change of disinfectant.
 - (~~3~~) **~~Contents of engineering study.~~** The engineering study and analysis must address the following:
 - (A) Select at least four (4) sample points for each treatment plant used by the system. At least twenty-five percent (25%) of the sample points must be at locations within the distribution system reflecting the maximum residence time of water in the system; and
 - (B) Collect samples from the selected points weekly for six (6) weeks and perform the following analyses before modification of treatment is initiated:
 - (i) Total coliform;
 - (ii) Fecal coliform;
 - (iii) Fecal streptococci; and
 - (iv) Standard plate counts at 35°C and 20°C.
 - (~~4~~3) **Continuing testing.** After modification of the treatment process, perform the bacteriological tests for samples collected at each of the selected points at quarterly intervals for one year, and then annually, when samples are collected for total trihalomethane determination. Submit the results to the DEQ.
 - (~~5~~4) **~~Free chlorine Primary Disinfection.~~** ~~Free chlorine shall A disinfectant must be added to provide a period of time for disinfection the required log inactivation of Giardia Lamblia cysts before ammonia is added.~~
 - (5) **Total chlorine.** The minimum total chlorine residual at the most distant points in a water distribution system must be 1.0 mg/l and at least 2.0 mg/l at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.
- (~~e~~e) **Other disinfectants.** Iodine or bromine compounds shall ~~must~~ not be used as a disinfectant. Ozone or ultraviolet light may be used for in-plant treatment or disinfection provided an approved residual disinfectant is added prior to distribution and maintained according to ~~OAC 252:631-3-10, Process Control Tests this chapter.~~ Chlorine dioxide may be used as long as the requirements in ~~OAC 252:631-3-10(1)(e) this chapter~~ are met.
- (f) **Process control tests for disinfectants.** Control tests must be performed by all systems that disinfect in accordance

with procedures approved by the DEQ. Sampling points must be changed regularly so that the system is sampled completely at least once each week.

- (1) **Chlorine.**
 - (A) Systems that use chlorine must test for free chlorine and total chlorine residual twice a day in the distribution system.
 - (B) The minimum free chlorine residual at the most distant points in a water distribution system must be 0.2 mg/l.
 - (C) Free chlorine residuals must be at least 1.0 mg/l at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.
- (2) **Chloramines.**
 - (A) Systems that use chloramines must test for total chlorine residual twice a day in the distribution system.
 - (B) Systems that use chloramines must submit yearly Standard Plate Count and Fecal Streptococci samples from the distribution system in order to document that no microbiological regrowth is occurring in the distribution system.
 - (C) The minimum total chlorine residual at the most distant points in a water distribution system must be 1.0 mg/l.
 - (D) Total chlorine residuals must be at least 2.0 mg/l at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.
- (3) **Other disinfectants.**
 - (A) Systems that use chlorine dioxide, ozone or ultraviolet light must maintain a free chlorine residual, or total chlorine residual, where chloramines are used, in accordance with OAC 252:631-3-3(a) and (b).
 - (B) Systems that use ozone or chlorine dioxide must perform process control tests in accordance with 40 CFR Section 141.132.

252:631-3-5. Disinfection byproducts [REVOKED]

- (a) **DBP monitoring.** According to EPA rules, unintended disinfectant byproducts (DBPs) may pose health risks. When the DBPs are high, then develop treatment profiles to remove excess organic materials (measured as TOC or total organic carbon) and excess disinfectant that may react to form DBPs, balancing the risks between microbial pathogens and DBPs. PWS systems that serve at least 10,000 people and use either surface water or groundwater under the direct influence of surface water must disinfect and monitor for DBPs. DBPs must be collected quarterly according to an approved site sampling plan. Note, EPA rules require all PWS systems to monitor DBPs by 1/1/2004 (see Appendix C).
- (b) **Running annual average.** Profiling decisions are based on the average concentration of TTHM and HAA5 for the most recent four quarters. Larger systems that follow the federal Information Collection Rule (Subpart M of 40 CFR Part 141) must average their DBPs over the most recent 12 months. Systems above 80% of the MCL or systems that have not collected

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4 quarters of data by March 16, 1999, must sample their DBPs and do disinfection profiling. For good cause, the system and the DEQ may agree to select a different data set.

252:631-3-6. Disinfection profiling and benchmarking

(a) ~~Systems that must monitor DBPs must also profile their disinfection practices, unless the DEQ grants a waiver based on their running annual average data which shows the DBPs are less than 80% of the MCLs (0.064 mg/l TTHM and 0.048 mg/l HAA5). Profiling systems must monitor under paragraph (b) of this section once a day for one year, beginning no later than March 16, 2000. Profiling may use one to three years of data.~~

(b) ~~The monitoring criteria for each segment during peak hourly flow are:~~

- ~~(1) temperature and pH of the finished water;~~
- ~~(2) residual disinfectant concentration ("C") leaving the plant; and~~
- ~~(3) determine the disinfectant contact time ("T") from the point of disinfection to the first customer.~~

(c) ~~Alternative monitoring may be approved for systems with three years of chlorine MOR data. Systems that use chloramines or ozone for primary disinfection must also calculate the logs of inactivation for viruses, using a method approved by the DEQ. This monitoring data is used to calculate the inactivation ratio based on CT99.9 values. For CT calculations, see 40 CFR Part 141 Subpart H.~~

(d) ~~Systems must retain disinfection profile data in graphic form, in a spreadsheet or in some other form acceptable to the DEQ. PWS Systems must develop disinfection profiles and benchmarks in accordance with 40 CFR Part 141, Subpart P.~~

252:631-3-7. Disinfection benchmarking [REVOKED]

(a) ~~Before making any changes in their disinfection practices, systems that profile their disinfection must establish the least amount of disinfection (the benchmark) to assure the change will not significantly reduce microbial protection. The benchmark is the lowest monthly average of Giardia lamblia inactivation in one year of profiling data, or the average of the lowest months for multiple years of profiling data.~~

(b) ~~Systems that use chloramines or ozone for primary disinfection must also calculate the disinfection benchmark for viruses, using a method approved by the DEQ.~~

(c) ~~Before changing their disinfection practices, systems must provide the DEQ with their disinfection benchmark data and an analysis of how the proposed change will affect the current levels of disinfection.~~

252:631-3-8. Public notice requirements

(a) ~~**Violations.** Public Water Supplies must notify the public of violations according to the table of public notice requirements in Appendix C. Public notice must not use unduly technical language or unduly small print and shall be in a form prescribed or approved by the DEQ. The notice must include mandatory health effects information where mandatory language is prescribed in 40 CFR Part 141.32.~~

(b) ~~**New customers.** The owner or operator of a community water system must give a copy of the most recent public notice for any outstanding violation of any maximum contaminant level, or any maximum residual disinfectant level, or any treatment technique requirement, or any variance or exemption schedule to all new billing units or new hookups prior to or at the time service begins. PWS systems must provide public notice in accordance with 40 CFR Part 141, Subparts D and Q.~~

252:631-3-9. Annual consumer confidence reports

(a) ~~Community water systems must deliver an annual report to their customers, identified by billing units and service connections. The contents of the report are described at 40 CFR Part 141.153, and must be in a form specified or approved by the DEQ. The reports must contain accurate and understandable information on the quality of the water and a table of contaminants detected, the level detected, the MCL, the violations, and the probable sources of the contamination (see 40 CFR Part 141.23 Part 141.25). The reports also must describe the potential adverse health effects from exposure to contaminants that are above the MCLs, using the language of Appendix C to 40 CFR 141, Subpart O all monitoring violations and any corrective action taken to eliminate the violations.~~

(b) ~~Each existing community water system must have delivered its first report to their customers and the DEQ by October 19, 1999, its second report by July 1, 2000, and thereafter by each July 1. The first report must contain data collected during or before calendar year 1998. Subsequent reports must contain data collected during the previous calendar year and the most recent data within the last five years. A new community water system must deliver its first report by July 1 of the year following its first full calendar year of operation and annually thereafter. A community water system that sells water to another community water system must have delivered the information to the buyer system by April 19, 1999, by April 1, 2000, and by April 1 annually thereafter or on a date mutually agreed upon by the seller and the purchaser and specifically included in a contract between the parties.~~

(c) ~~Within three months after notifying their customers, community systems must certify writing that the report was delivered to their customers. Systems must keep a copy at least five years, and make their reports available to the public upon request.~~

(d) ~~Methods of delivery.~~

(1) ~~Community water systems serving 10,000 persons or more must mail or otherwise directly deliver a copy of the report to each customer who gets a water bill and make a good faith effort to reach other consumers such as:~~

- (A) ~~posting the reports on the Internet;~~
- (B) ~~mailing to postal patrons in metropolitan areas;~~
- (C) ~~advertising the availability of the report in the news media;~~
- (D) ~~publishing in a local newspaper;~~
- (E) ~~posting in public places such as cafeterias or lunch rooms of public buildings; or~~
- (F) ~~delivering multiple copies for distribution by single billed customers such as apartment buildings~~

or large private employers and to community organizations.

(2) Each community water system serving 100,000 or more persons must also post its current year's report to a publicly accessible site on the Internet.

(3) Community water systems serving fewer than 10,000 persons either must mail or deliver a copy of the annual report to each customer, or they must Publish the reports in one or more local newspapers serving the area in which the system is located and state that the reports will not be mailed.

(4) Systems serving 500 or fewer persons need not deliver copies of the annual report to their customers if at least once per year by mail, by door to door delivery or by posting in an appropriate location they notify their customers that the annual report is available upon request. PWS systems must prepare and deliver an annual Consumer Confidence Report in accordance with 40 CFR Part 141, Subpart O.

252:631-3-10. Process control tests

These control Control tests shall must be performed in accordance with procedures approved by the DEQ.

(1) Disinfection.

(A) **Monitoring free chlorine in the distribution system.** Systems that use chlorine must test for free chlorine residual twice a day in the distribution system at selected points. Points shall be changed regularly so that the system is sampled completely at least once each week. The minimum free chlorine residual at the most distant points in a water distribution system shall be 0.2 milligrams per liter. Free chlorine residuals shall be at least 1.0 milligram per liter at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.

(B) **Chloramines.** Systems that use chloramines must test for combined chlorine residual twice a day in the distribution system at selected points. Systems utilizing chloramination as a residual disinfectant must submit yearly samples from the distribution system in order to document that no microbiological regrowth is occurring in the distribution system. The minimum combined chlorine residual at the most distant points in a water distribution system shall be 1.0 milligram per liter. Combined chlorine residuals shall be at least 2.0 milligrams per liter when leaving the plant or well. Higher residuals may be required depending on pH, temperature and other characteristics of the water.

(C) **Chlorine dioxide.** Systems that use chlorine dioxide must do control tests twice a day on finished water. Control tests and by-product limits must be according to manufacturer specifications or to an approved plan.

(2) Treatment plants, Surface water, groundwater under the direct influence of surface water, and springs.

(A) Systems that use coagulation, settling, softening or filtration must do the following chemical control tests on the filtered water twice a day.—List them, record the results on a report form provided or approved by the DEQ, and submit the form to the DEQ Water Quality Division each month, with a copy to the local DEQ representative:

- (i) Alkalinity - Phenolphthalein (P);
- (ii) Alkalinity - Total;
- (iii) Hardness (where softening is used);
- (iv) pH value; and
- (v) Stability to calcium carbonate (once per day);

(B) Perform Jar tests as needed to determine the optimum coagulant dosages for plant control and operation to meet turbidity requirements.

(C) Turbidity samples must be performed on representative samples of the system's filtered water during each four hour period of operation. Continuous monitoring for turbidity may be substituted for grab sampling. Record the highest turbidity value per four-hour period. For systems using slow sand filtration or serving less than five hundred (500) population, the DEQ may reduce the sampling frequency to daily if it is determined that less frequent monitoring is sufficient to determine filter performance.

(D) The residual disinfectant concentration at the POE must be monitored continuously and the lowest value recorded each day.

(i) Grab sampling every four (4) hours may be substituted for continuous monitoring for no more than five (5) working days following monitoring equipment failure.

(ii) Systems serving 3,300 or fewer persons may take grab samples in lieu of continuous monitoring based on the following:

- (I) population less than 501—1 sample per day;
- (II) population of 501 through 1,000—2 samples per day;
- (III) population of 1,001 through 2,500—3 samples per day;
- (IV) population of 2,501 through 3,300—4 samples per day.

(iii) Samples must be taken at evenly spaced intervals throughout daily operation. If the residual disinfectant concentration falls below 0.2 mg/l in a system, the system must monitor every four (4) hours until the residual disinfectant in the system is equal to or greater than 0.2 mg/l. Measure Residual disinfection at the same point and time as total coliform samples are collected and record on the sample form.

(E) Minor water systems that use surface water are not required to submit monthly operation reports (MORs). However, these systems must measure turbidity and chlorine residuals daily, maintain a chlorine residual of at least 1 mg/l, and keep records

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~~of these measurements at the plant, collected and analyzed in accordance with 40 CFR Part 141, Subparts H and P.~~

(32) **Groundwater supplies.** The following tests are required for community and non-transient non-community water systems utilizing groundwater as a source. Test results ~~shall~~ must be listed as indicated on the appropriate forms and submitted to the DEQ:

(A) Static level and pumping level of each well ~~shall~~ must be determined quarterly;

(B) Alkalinity, pH, and stability ~~shall~~ must be determined at least monthly for community systems and at least quarterly for non-transient non-community water systems; and

(C) Where chlorination is practiced, determine the chlorine residual twice daily in the distribution system ~~and once daily at the POE.~~

(3) **Purchase water systems.** Purchase water community systems that provide supplemental chlorination must determine the chlorine residual twice daily in the distribution system and once daily at the POE.

(4) **Special tests.**

(A) Systems that remove iron or manganese must ~~also test the raw and finished water weekly for those metals.~~

(B) Systems that treat for the removal of regulated contaminants must monitor the raw and finished water for those contaminants daily in addition to collecting compliance samples.

(C) Threshold odor and other tests may be required by the DEQ based on local conditions.

(5) **Fluoridation.** Where fluoridation is practiced, ~~the optimum fluoride concentration in the distribution system is 0.8 mg/L for reducing dental caries. The recommended control range in the distribution system is 0.7 to 1.3 mg/L. system must:~~

(A) ~~Analyze~~ analyze the water twice a day, both before and after fluoridation, ~~to be sure the fluoride concentration stays within the recommended control range.;~~

(B) ~~Forward~~ forward a copy of the analytical report (DEQ form No. 631-001) to the DEQ monthly and keep a copy at the plant. ~~;~~ and

(C) ~~Every month~~ submit a sample of treated water to the DEQ State Environmental Laboratory, or to a ~~DEQ Certified DEQ-Approved~~ laboratory, for analysis of fluoride content every month.

252:631-3-11. Operating records & reports

(a) **Immediate notification to DEQ.** Each system must report to the DEQ by the end of the next business day if any of the following occur:

(1) Waterborne disease outbreak;

(2) Finished water turbidity exceeds one (1) NTU for surface water systems serving a population greater than 10,000 and five (5) NTU for surface water systems serving a population of 10,000 or less. After January 1, 2005,

all surface water systems must report if the finished water turbidity exceeds one (1) NTU;

(3) Chlorine residual falls below 0.2 mg/l at the POE and whether the residual was restored to at least 0.2 mg/l within four (4) hours;

(4) Nitrate level exceeds 10 mg/l;

(5) Verification of a positive Fecal Coliform or E. Coli sample; and

(6) Exceedance of the Chlorine Dioxide MRDL.

(ab) **Records.** All systems must keep a daily record of the results of required process control tests and list the results of microbiological checks, ~~required in Appendix B,~~ on the dates sampled. The records of all laboratory checks and control tests must indicate when, where, and by whom the tests were made. The PWS system must complete and submit the original of the DEQ-approved monthly operational report form to the DEQ with a copy to the appropriate local DEQ representative no later than the tenth (10th) day of the following month.

(bc) ~~Treated water~~ **Water treatment systems.**

(1) ~~Operators of Systems that provide water treatment plants that use conventional coagulation, settling, softening or filtration shall~~ must keep:

(1A) a daily record of the operations performed in the treatment process;

(2B) observations, cost and occurrences related to the operation of the plant; and

(3C) the control tests and laboratory checks previously described in OAC 252:631-3-10.

(2) In addition, water treatment plants designed for turbidity and microbial removal must keep:

(4A) the number of filtered water turbidity samples taken during the month;

(5B) the number and percentage of turbidity samples ~~which that~~ are less than or equal to the standards; and

(6C) the date and value of any turbidity measurements ~~which that~~ exceed one (1) and five (5) NTU. Where continuous monitoring is used, measurements must be recorded every four (4) hours during plant operation.

(ed) **Groundwater systems.** Operators of groundwater systems ~~shall~~ must keep a daily record of all well operations ~~and maintenance of the system,~~ in addition to the process control tests and laboratory checks required for ~~groundwater~~ ground water supplies. Community and NTNC systems must submit monthly operational reports to DEQ.

(de) **Purchase water systems.** Operators of community systems that purchase water ~~community systems that as their sole source and provide supplemental chlorination~~ must submit a monthly ~~record~~ operational report to the DEQ of the operation of the system, in addition to required laboratory checks. Monthly reports are not required from purchase water systems that do not add ~~chlorine~~ a disinfectant.

(e) **Special reports.** Each system must report to the DEQ by the end of the next business day if any of the following occur:

(1) ~~Waterborne disease outbreak;~~

(2) ~~Turbidity exceeds 5 NTU;~~

(3) Chlorine residual falls below 0.2 mg/l in the water entering the distribution and whether the residual was restored to at least 0.2 mg/l within 4 hours.

(f) **Reporting of additional monitoring.** Additional monitoring, listed in Appendix B, must be reported to DEQ in accordance with 40 CFR Part 141, Subpart C at the end of each monitoring period.

(g) **Record keeping.** All records must be available for inspection by the DEQ and maintained for at least ~~10~~ ten (10) years unless otherwise specified.

252:631-3-12. Reporting requirements for Control of lead and copper

~~Water PWS systems must submit a lead and copper site sampling plan with criteria for choosing sites. Systems must collect and report the results of all lead and copper samples in accordance with 40 CFR Part 141, Subpart I within ~~10~~ ten (10) days after the end of the monitoring period. They must certify that each first draw sample is 1 liter in volume, has stood motionless for 6 hours in the pipe, and that residents who pull samples have been properly informed of the procedure. The system must report the 90th percentile levels, and may ask the DEQ to assist with calculations. Systems must also report any site that was not sampled during the previous sampling period and why, the pH of tap samples and other required parameters, and the results of all POE samples. Systems that exceed lead and copper action levels must submit the following:~~

- ~~(1) a source water monitoring report which includes results of all source water samples within 10 days following the monitoring period and any site that was not sampled during the previous sampling period and an explanation for not sampling;~~
- ~~(2) a corrosion control treatment report which includes corrosion control tests, corrosion control recommendations, evaluations of effectiveness of corrosion control where required, and certification of installation of treatment where required;~~
- ~~(3) a source water treatment report which includes recommendations regarding source water treatment and a letter certifying installation of treatment within 24 months;~~
- ~~(4) a lead service line replacement plan according to 40 CFR 141.84; and~~
- ~~(5) an annual certification that public education materials were distributed as long as the lead action level is exceeded.~~

**252:631-3-13. Disinfection byproduct reporting
Disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors**

(a) **When.** Systems must monitor and report to the DEQ within 10 days after the end of each monitoring period in which samples were collected. See Appendix B for applicability.

(b) **Disinfection byproducts.** Systems must report the information specified in the following:

(1) Systems monitoring for TTHM and HAA5 on a quarterly or more frequent basis must report the number of samples taken during the last quarter, the location, date, and result of each sample taken during the last quarter, the average of all samples taken in the last quarter, the annual average of the quarterly averages of this section for the last four quarters, and whether the MCL was exceeded;

(2) Systems monitoring for TTHMs and HAA5 less frequently than quarterly (but at least annually) must report the number of samples taken during the last year, the location, date, and result of each sample taken during the last quarter, the average of all samples taken over the last year, and whether the MCL was exceeded;

(3) Systems monitoring for TTHMs and HAA5 less frequently than annually must report the location, date, and result of the last sample taken and whether the MCL was exceeded;

(4) Systems monitoring for chlorite must report the number of samples taken each month for the last 3 months, the location, date, and result of each sample taken during the last quarter, for each month in the reporting period, the average of all samples taken in each month, and whether the MCL was exceeded, and in which month it was exceeded;

(5) Systems monitoring for bromate must report the number of samples taken during the last quarter, the location, date, and result of each sample taken during the last quarter, the average of the monthly averages of all samples taken in the last year, and whether the MCL was exceeded; and

(6) The State may choose to perform calculations and determine whether the MCL was exceeded, in lieu of having the system report that information.

(c) **Disinfectants.** Systems must report the information specified in the following:

(1) Systems monitoring for chlorine or chloramines must report the number of samples taken during each month of the last quarter, the monthly average of all samples taken in each month for the last 12 months, the average of all monthly averages for the last 12 months, and whether the MRDL was exceeded;

(2) Systems monitoring for chlorine dioxide must report the dates, results, and locations of samples taken during the last quarter, whether the MRDL was exceeded, and whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute; and

(3) The DEQ may choose to perform calculations and determine whether the MRDL was exceeded, in lieu of having the system report that information.

(d) **Disinfection byproduct precursors and enhanced coagulation or enhanced softening.** Systems must report the information specified in the following:

(1) Systems monitoring monthly or quarterly for TOC and required to meet the enhanced coagulation or enhanced softening requirements must report the number of paired (source water and treated water, prior to continuous disinfection) samples taken during the last quarter,

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the location, date, and result of each paired sample and associated alkalinity taken during the last quarter, the average of the percent reduction of TOC for each paired sample and the required TOC percent removal for each month in the reporting period that paired samples were taken, calculations for determining compliance with the TOC percent removal requirements, and whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements for the last four quarters;

(2) Systems monitoring monthly or quarterly for TOC and meeting one or more of the alternative compliance criteria must report the alternative compliance criterion that the system is using, the number of paired samples taken during the last quarter, the location, date, and result of each paired sample and associated alkalinity taken during the last quarter, the running annual average based on monthly averages (or quarterly samples) of source water TOC or of treated water TOC, the running annual average based on monthly averages (or quarterly samples) of source water SUVA or of treated water SUVA, the running annual average of source water alkalinity and of treated water alkalinity, the running annual average for both TTHM and HAA5, the running annual average of the amount of magnesium hardness removal (as CaCO₃, in mg/L, and whether the system is in compliance with the particular alternative compliance criterion; and

(3) The DEQ may choose to perform calculations and determine whether the treatment technique was met, in lieu of having the system report that information disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors in accordance with 40 CFR Part 141 Subpart C and L.

252:631-3-14. Conventional filtration systems, reporting and recordkeeping requirements [REVOKED]

(a) A PWS system that provides filtration must submit turbidity measurements, in accordance with OAC 252:631-3-10(2)(C), on the DEQ approved Monthly Operational Report.

Information that must be reported includes:

- (1) The total number of filtered water turbidity measurements taken during the month;
- (2) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits; and
- (3) The date and value of any turbidity measurements taken during the month which exceed 1 NTU for systems using conventional filtration treatment or direct filtration, or which exceed the maximum level set by the DEQ.

(b) A PWS system that provides filtration treatment or direct filtration must also report monthly to the State the following information for systems serving 10,000 persons or more beginning January 1, 2002 and for systems serving less than 10,000 persons beginning January 1, 2004.

Systems must maintain the results of individual filter monitoring for at least three years. Systems must report that they have

conducted individual filter turbidity monitoring within 10 days after the end of each month the system serves water to the public. Systems must report individual filter turbidity measurement results within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (1) through (4) of this subsection. Systems that use lime softening may apply to DEQ for alternative exceedance levels for the levels specified in paragraphs (1) through (4) of this subsection if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance. For any individual filter that has a measured turbidity level of greater than:

(1) 1.0 NTU in two consecutive measurements taken 15 minutes apart, the system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. Also, the system must either produce a filter profile for the filter within 7 days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(2) 0.5 NTU in two consecutive measurements taken 15 minutes apart at the end of the first four hours of continuous filter operation after the filter has been backwashed or otherwise taken offline, the system must report the filter number, the turbidity, and the date(s) on which the exceedance occurred. Also, the system must either produce a filter profile for the filter within 7 days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(3) 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of three months in a row, the system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. Also, the system must conduct a self-assessment of the filter within 14 days of the exceedance and report that the self-assessment was conducted. The self-assessment must consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report.

(4) 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of two months in a row, the system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. Also, the system must arrange for a comprehensive performance evaluation by the DEQ, or a third party approved by the DEQ, no later than 30 days following the exceedance and have the evaluation completed and submitted to the DEQ no later than 90 days following the exceedance.

252:631-3-21. Public water supply annual service fees

(a) Each PWS system shall be charged an annual fee (see 27A O.S. § 2-6-306).

(b) ~~Actual~~The annual fee shall be calculated using the actual costs of services shall be calculated by the sum of the following costs, as applicable follows:

(1) ~~Bacteriological costs equal the number of samples analyzed at \$10 each;~~

(2) ~~Volatile organic chemical costs equal the number of sources in the water system (i.e., number of wells and number of surface sources) at \$20 each (representative annual cost per sample which is collected and analyzed only once every three years, applicable to ground and surface systems only);~~

(3) ~~Inorganic chemical costs equal \$86 (representative annual cost per sample which is collected and analyzed only once every three years, applicable to ground and surface systems only);~~

(4) ~~Organic chemical costs equal \$172 (representative annual cost per sample which is collected and analyzed only once every three years, applicable to surface systems only);~~

(5) ~~Trihalomethane costs equal \$145 for ground systems or \$580 for surface systems which serve a population of 10,000 or greater;~~

(6) ~~Radiochemical costs equal \$214 (applicable to ground and surface systems only); Laboratory analysis fees, for parameters analyzed by the State Environmental Laboratory, shall be charged as specified in OAC 252:305, "Laboratory Services";~~

(7-2) ~~Inspection service costs equal \$25 for purchase systems, \$50 for ground systems or \$100 for surface systems and groundwater under the direct influence of surface water systems; and~~

(8-3) ~~Federal program requirement costs for tracking and reporting, and enforcement and technical assistance costs (applicable to community systems only and non-transient non-community systems) equal \$186 for purchase systems, \$815 for ground systems or \$3479 for surface systems and groundwater under the direct influence of surface water systems.~~

(c) Each system shall be charged the actual cost for regulatory services as calculated according to OAC 252:631-3-21(b), except that:

(1) ~~No no~~ system shall pay less than a minimum annual fee of \$50 for purchase water systems, \$75 for ~~groundwater-ground~~ water systems and \$150 for surface water system (with the exception of state, federal and non-transient non-community systems, which shall pay actual costs of services) ~~nor shall any system pay or~~ less than four cents (\$0.04) per service connection per month—, whichever is greater, and

(2) ~~No no~~ system shall pay an annual fee increase of more than thirty cents (\$0.30) per service connection per month (with the exception of the application of the minimum fee).

(3) ~~The portion of the annual fee applicable for laboratory test performed the previous state fiscal year by a~~

laboratory certified pursuant to OAC 252:300 shall be deducted from the total annual fee.

(4) ~~A further reduction in fees will be made, beginning with the smallest residential system and continuing until all federal grant and appropriated funds are used, to the extent that the grant and appropriated money will fund the costs in excess of the previous year's fee (with the exception of those systems that are affected by the minimum fee described in OAC 252:631-3-21(c)(1).~~

(d) The minimum annual fees listed in OAC 252:631-3-21(c) do not apply to state, federal, tribal, and non-transient non-community systems. These systems shall pay the actual costs of services.

(~~d~~e) Each system will be notified by mail of the fee due from that system by August 1 of each year. The DEQ shall mail such notice to the ~~last~~most recent name and address provided to the DEQ by the PWS system, however, failure to receive such notice by the system shall not operate to waive any fees due to the DEQ.

(e) ~~Public Water Supply Laboratory Certification fees are as specified in OAC 252:300. There is no laboratory certification fee for PWS systems that pay the minimum annual PWS system regulatory service rate fee of \$0.04 per service connection per month because it is included.~~

252:631-3-22. Security

A PWS system shall provide:

- (1) fencing with locking gates;
- (2) locks on access manholes;
- (3) locks on wellheads and well houses; and
- (4) other necessary precautions to prevent vandalism, pilfering, trespass, and sabotage.

SUBCHAPTER 5. MINOR WATER SYSTEMS

252:631-5-1. General

(a) Minor water systems must submit a minimum of one (1) bacteriological sample per year. If the sample is coliform positive, then the system must continue to submit bacteriological samples until a coliform negative sample is obtained.

(b) Systems, which operate on an intermittent or seasonal basis, shall submit bacteriological samples on two (2) consecutive days prior to placing the system into operation. The system can be placed into operation only after the samples are shown to be safe and authorization to operate is given by the local DEQ office.

(c) Maintain a water pressure of at least twenty-five (25) psi at all service connections.

(d) Where chlorination is practiced, a chlorine residual of at least 1 mg/l must be maintained at the POE and at least 0.2 mg/l at the farthest point in the distribution system. The residual disinfectant concentration at the POE and at the farthest point in the distribution system must be monitored once per day.

(e) Keep records of all operational requirements at the facility.

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252:631-5-2. Surface water, ground water under the direct influence of surface water, and springs

(a) Slow sand filtration.

- (1) Finished water turbidity must be measured once per day while the plant is in operation.
- (2) The finished water turbidity must be below one (1.0) NTU in ninety-five percent (95%) of monthly samples.
- (3) The finished water turbidity must never exceed five (5) NTU.

(b) Conventional Filtration. Conventional filtration systems that use coagulation, settling, softening and filtration must do the following while the plant is in operation:

- (1) Finished water turbidity must be measured once per day.
- (2) The finished water turbidity must be below 0.5 NTU in ninety-five percent (95%) of monthly samples.
- (3) The finished water turbidity must never exceed five (5) NTU. If the turbidity exceeds five, the DEQ must be notified immediately.
- (4) Perform the following process control tests on the filtered water once a day:
 - (A) Alkalinity - Phenolphthalein (P);
 - (B) Alkalinity - Total;
 - (C) Hardness (where softening is used); and
 - (D) pH value;

- (5) Perform Jar tests as needed to determine the optimum coagulant dosages for plant control and operation to meet turbidity requirements.

252:631-5-3. Groundwater supplies

The following tests are required.

- (1) Alkalinity and pH must be determined at least quarterly; and
- (2) Those systems located between 100 and 300 feet from gasoline storage tanks require quarterly VOC monitoring. If the facility has three (3) years of compliant samples, the monitoring may be reduced to annual monitoring.

252:631-5-4. Special tests

Systems that treat for the removal of regulated contaminants must monitor for those contaminants weekly in addition to collecting compliance samples.

252:631-5-5. Security

Minor water systems must provide:

- (1) fencing with locking gates;
- (2) locks on access manholes;
- (3) locks on wellheads and well houses; and
- (4) other necessary precautions to prevent vandalism, pilfering, trespass, and sabotage.

APPENDIX A. PRIMARY DRINKING WATER STANDARDS [REVOKED]

Name Of Contaminant	Maximum Contaminant Level (MCL)
MICROORGANISMS	
Total coliform	No more than one positive sample per month (or over 5% of samples for systems over 33,000), nor a positive repeat sample
Fecal coliform	Any fecal coliform positive repeat sample or any total coliform positive following a fecal coliform positive routine sample constitutes an acute MCL violation.
E. coli	Any E.coli positive repeat sample or any total coliform positive following an E. coli positive routine sample constitutes an acute MCL violation.
<i>Giardia lamblia</i> and viruses	99.9% inactivation (treatment technique)
Viruses	99.99% inactivation (treatment technique)
INORGANIC CHEMICALS	
Antimony	0.006 mg/l
Arsenic	0.050 mg/l
Asbestos	7 million fibers/l (> 10 um long)
Barium	2.0 mg/l
Beryllium	0.004 mg/l
Cadmium	0.005 mg/l
Chromium	0.1 mg/l
Copper	1.3 mg/l (action level)
Cyanide	0.2 mg/l
Fluoride	4 mg/l
Lead	0.015 mg/l (action level)
Mercury	0.002 mg/l
Nitrate	10 mg/l
Nitrite	1 mg/l
Total Nitrogen (Nitrate and Nitrite)	10 mg/l
Selenium	0.05 mg/l
Thallium	0.002 mg/l
ORGANIC CHEMICALS	
Volatile Organic Compounds (VOC)	
Benzene	0.005 mg/l
Carbon tetrachloride	0.005 mg/l
Dichloromethane	0.005 mg/l
1,2-Dichloroethane	0.005 mg/l
Trichloroethylene	0.005 mg/l
Para-Dichlorobenzene	0.075 mg/l
1,1-Dichloroethylene	0.007 mg/l
1,2,4-Trichlorobenzene	0.07 mg/l
1,1,1-Trichloroethane	0.2 mg/l
1,1,2-Trichloroethane	0.005 mg/l
Cis-1,2-Dichloroethylene	0.07 mg/l
1,2-Dichloropropane	0.005 mg/l

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Name Of Contaminant	Maximum Contaminant Level (MCL)
Ethylbenzene	0.7 mg/l
Monochlorobenzene	0.1 mg/l
O-Dichlorobenzene	0.6 mg/l
Styrene	0.1 mg/l
Tetrachloroethylene	0.005 mg/l
Toluene	1 mg/l
Trans-1,2-Dichloroethylene	0.1 mg/l
Vinyl chloride	0.002 mg/l
Xylenes(total)	10 mg/l
Synthetic Organic Compounds (SOC)	
Alachlor	0.002 mg/l
Atrazine	0.003 mg/l
Benzo(a)pyrene	0.0002 mg/l
Carbofuran	0.04 mg/l
Chlordane	0.002 mg/l
Dalapon	0.2 mg/l
Di(2-ethylhexyl) Adipate	0.4 mg/l
Di(2-ethylhexyl) Phthalates	0.006 mg/l
Dibromochloropropane (DBCP)	0.0002 mg/l
Dinoseb	0.007 mg/l
Diquat	0.02 mg/l
Endothall	0.1 mg/l
Endrin	0.002 mg/l
Ethylene dibromide	0.00005 mg/l
Glyphosate	0.7 mg/l
Heptachlor	0.0004 mg/l
Heptachlor epoxide	0.0002 mg/l
Hexachlorobenzene	0.001 mg/l
Hexachlorocyclopentadiene	0.05 mg/l
Lindane	0.0002 mg/l
Methoxychlor	0.04 mg/l
Oxamyl (Vydate)	0.2 mg/l
Picloram	0.5 mg/l
Polychlorinated biphenyls (PCBs)	0.0005 mg/l
Pentachlorophenol	0.001 mg/l
Simazine	0.004 mg/l
Toxaphene	0.003 mg/l
2,3,7,8-TCDD (Dioxin)	3 X 10 ⁻⁸ mg/l
2,4-D	0.07 mg/l
2,4,5-TP (Silvex)	0.05 mg/l
DISINFECTANTS & DBPs	
Chlorine	MRDL-4 mg/l (as CL ₂) (eff. 1/1/2002 > 10,000; 1/1/2004 < 10,000)
Chloramines	MRDL-4 mg/l (as CL ₂) (eff. 1/1/2002 > 10,000; 1/1/2004 < 10,000)
Chlorine dioxide	MRDL -0.8 mg/l (as CLO ₂) (eff. 1/1/2002 > 10,000; 1/1/2004 < 10,000)
Total trihalomethanes	0.1 mg/l (systems over 10,000); then 0.080 mg/l (1/1/2002 > 10,000; 1/1/2004 < 10,000)

HAA5	0.1 mg/l (systems over 10,000); then 0.060 mg/l (eff. 1/1/2002 > 10,000) (eff. 1/1/2004 < 10,000)
Chlorite	1.0 mg/l (eff. 1/1/2002 > 10,000; 1/1/2004 < 10,000)
Bromate	0.010 mg/l (eff. 1/1/2002 > 10,000; 1/1/2004 < 10,000)
RADIONUCLIDES	
Beta particle and photon activity	4 mrem
Combined Ra-226 & Ra-228	5 pCi/L
Gross alpha (not radon or uranium)	15 pCi/L
TURBIDITY (treatment technique)	
Slow sand filter	1.0 NTU
Rapid rate sand filter	0.5 NTU; never > 5 NTU 0.3 NTU; never > 1 NTU (effective 1/1/2002 > 10,000) (effective 1/1/2004 < 10,000)

Secondary Drinking Water Standards

Name Of Contaminate	Level
Aluminum	0.05-0.2 mg/l
Chloride	250 mg/l
Color	15 color units
Copper	1.0 mg/l
Corrosivity	Non-corrosive
Fluoride	2.0 mg/l
Foaming Agents	0.5 mg/l
Iron	0.3 mg/l
Manganese	0.05 mg/ l
Odor	3 threshold odor number
pH	6.5 - 8.5
Silver	0.1 mg/l
Sulfate	250 mg/l
Total dissolved solids	500 mg/l
Zinc	5 mg/l

APPENDIX B. MONITORING REQUIREMENTS [REVOKED]

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring																																																				
<p>Total Coliform</p> <p>APPLIES TO: all PWS systems</p> <p>References: for monitoring, see 40 CFR 141.21; for the MCL, see 40 CFR 141.63</p>	<p>Sampling Plan. All systems must submit a site sampling plan to the DEQ for approval. The sites must be representative of the whole distribution system.</p> <p>Community systems must sample according to their plan, with the following number of samples:</p> <p>Population and monthly Total coliform samples</p> <table border="0"> <tr><td>up to 1,000</td><td>.....1</td><td>25,001 to 33,000</td><td>.....30</td></tr> <tr><td>1,001 to 2,500</td><td>.....2</td><td>33,001 to 41,000</td><td>.....40</td></tr> <tr><td>2,501 to 3,300</td><td>.....3</td><td>41,001 to 50,000</td><td>.....50</td></tr> <tr><td>3,301 to 4,100</td><td>.....4</td><td>50,001 to 59,000</td><td>.....60</td></tr> <tr><td>4,101 to 4,900</td><td>.....5</td><td>59,001 to 70,000</td><td>.....70</td></tr> <tr><td>4,901 to 5,800</td><td>.....6</td><td>70,001 to 83,000</td><td>.....80</td></tr> <tr><td>5,801 to 6,700</td><td>.....7</td><td>83,001 to 96,000</td><td>.....90</td></tr> <tr><td>6,701 to 7,600</td><td>.....8</td><td>96,001 to 130,000</td><td>.....100</td></tr> <tr><td>7,601 to 8,500</td><td>.....9</td><td>130,001 to 220,000</td><td>.....120</td></tr> <tr><td>8,501 to 12,900</td><td>.....10</td><td>220,001 to 320,000</td><td>.....150</td></tr> <tr><td>12,901 to 17,200</td><td>.....15</td><td>320,001 to 450,000</td><td>.....180</td></tr> <tr><td>17,201 to 21,500</td><td>.....20</td><td>450,001 to 600,000</td><td>.....210</td></tr> <tr><td>21,500 to 25,000</td><td>.....25</td><td>600,001 to 780,000</td><td>.....240</td></tr> </table> <p>Non-community systems using surface water, or using only ground water and serving more than 1000 population during any month, must sample as a community system.</p> <p>Non-community systems using only ground water and serving 1,000 population or fewer must sample each calendar quarter.</p> <p>Minor water systems must be sampled at least annually.</p> <p>Results of all routine and repeat samples not invalidated by the DEQ must be used to determine compliance with the MCL for total coliform.</p>	up to 1,0001	25,001 to 33,00030	1,001 to 2,5002	33,001 to 41,00040	2,501 to 3,3003	41,001 to 50,00050	3,301 to 4,1004	50,001 to 59,00060	4,101 to 4,9005	59,001 to 70,00070	4,901 to 5,8006	70,001 to 83,00080	5,801 to 6,7007	83,001 to 96,00090	6,701 to 7,6008	96,001 to 130,000100	7,601 to 8,5009	130,001 to 220,000120	8,501 to 12,90010	220,001 to 320,000150	12,901 to 17,20015	320,001 to 450,000180	17,201 to 21,50020	450,001 to 600,000210	21,500 to 25,00025	600,001 to 780,000240	<p>Repeat samples. Collect within 24 hours of being notified that a routine sample is total coliform positive. The DEQ may extend the 24-hour limit if the system cannot collect and submit repeat samples for reasons beyond its control.</p> <p>Number. Systems that collect more than one routine sample per month must collect at least three repeat samples for each positive sample, and all others must collect at least four.</p> <p>Location. Take at least one repeat sample from the original coliform positive site and from taps within five service connections upstream and downstream of the original sampling site. The DEQ may waive one sample if the site is within one tap of the end of the distribution system. Collect all repeat samples on the same day, or within four days for systems with a single connection.</p> <p>Repeat this process until total coliforms are not found in any repeat sample. Systems that collect five or fewer samples per month that have one or more positive samples must collect at least five routine samples during the next month, unless waived by the DEQ following a site visit or if the problem is deemed corrected by the DEQ before the end of the</p>	<p>Upon written approval of the DEQ:</p> <p>Community systems serving 1,000 population or fewer, with a total coliform MCL or monitoring violations for three years, and with a sanitary survey that shows the system is supplied solely by protected ground water free of sanitary defects, may reduce the frequency to one per quarter.</p> <p>Non-community systems using only groundwater. The DEQ may reduce the frequency to one per year if a sanitary survey shows the system is free of critical sanitary defects.</p>
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1,001 to 2,5002	33,001 to 41,00040																																																				
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Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
<p>Turbidity</p> <p>APPLIES TO: All Community, Non-Community, NTNC systems using filtration</p>	<p>Frequency: Highest combined finished water turbidity reading recorded every four hours of operation.</p> <p>Systems are required to monitor individual filter turbidity every 15 minutes beginning January 1, 2002 for systems serving a population of 10,000 or greater and beginning January 1, 2004 for systems serving a population of less than 10,000.</p>	<p>by the DEQ before the end of the next month. A routine sample collected within five service connections of the initial positive sample may be used as a repeat sample.</p> <p>Any positive total coliform sample must be analyzed for fecal coliform.</p>	<p>Systems using slow sand filtration may reduce the sampling frequency to daily if it is determined by the DEQ that less frequent sampling is sufficient to determine filter performance.</p>
<p>Inorganic Chemicals</p> <p>Antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, and thallium</p> <p>APPLIES TO: Community; NTNC Ref.: 40 CFR 141.23(c)</p>	<p>Frequency: surface water systems, once a year; groundwater systems, once every three years.</p> <p>Location: Sample at each POE; samples must be representative of each source after treatment.</p> <p>If a system samples more frequently than annually, compliance shall be determined on the running annual average at any sampling point. If a system samples on an annual or less frequent schedule, compliance shall be determined on the average of an initial and confirmation sample.</p>	<p>If a MCL is exceeded, sample quarterly, beginning with the next quarter. Groundwater systems must sample for two consecutive quarters and surface water systems must sample for four consecutive quarters.</p> <p>If the results indicate that the sources are reliable and consistently below the applicable standard, request a waiver to reduce sampling to the original frequency.</p>	<p>The monitoring frequency may be reduced to annually. Water systems may apply to the state for a waiver from initial and repeat sampling frequencies. If the results of three years of sampling have no detections, the system may apply for a waiver from monitoring. These waivers must be renewed every 9 years. Waivers are contaminant specific and must be based upon a vulnerability assessment based on lack of use of the chemicals in the area or physical condition of the well and the area surrounding it.</p>
<p>Inorganic Chemicals</p> <p>Asbestos</p> <p>APPLIES TO: Community; NTNC Ref.: 40 CFR 141.23(b)</p>	<p>Systems that are vulnerable to asbestos must monitor for asbestos at a tap served by asbestos-cement pipe under conditions most conducive to asbestos contamination.</p> <p>Frequency: once each nine years, during the first three years of each nine-year compliance cycle. Vulnerability is determined by corrosion of asbestos-cement pipe or the presence of asbestos in source water.</p>		<p>Systems not vulnerable to asbestos may apply to the DEQ for a monitoring waiver.</p>

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
<p>Inorganic Chemicals Nitrate & nitrite</p> <p>APPLIES TO: Community; NTNC; Non-community</p>	<p>Frequency: Community and NTNC, monitor annually for groundwater systems and quarterly for surface water systems. Non-community systems monitor annually.</p> <p>Location: at each POE; sample must be representative of each source after treatment.</p> <p>Ref.: 40 CFR 141.23(d) & (e)</p>	<p>If any sample is 50 % or more of the MCL, sample quarterly for at least one year.</p>	<p>Surface water systems with less than 50 % of the MCL and groundwater systems which are reliably and consistently below the MCL may be reduced to annual samples. The annual sample must be collected during the quarter which yielded the highest results during initial monitoring. Systems that disinfect are exempt from nitrite.</p>
<p>Inorganic Chemicals Sodium</p> <p>APPLIES TO: Community</p>	<p>Sample at POE annually for surface water systems, and every three years for groundwater systems.</p> <p>Ref.: 40 CFR 141.41</p>		
<p>Inorganic Chemicals Sulfate</p> <p>APPLIES TO: Community; NTNC</p>	<p>Sample at POE which is representative of each source after treatment for sulfate.</p> <p>Ref.: 40 CFR 141.40(n)</p>		
<p>Radiochemical</p> <p>APPLIES TO: Community</p> <p>Ref.: 40 CFR 141.26</p>	<p>Monitor every 4 years by analyzing 4 consecutive quarterly samples or a composite of 4 consecutive quarterly samples.</p> <p>Community systems using surface water sources and serving more than one-hundred thousand (100,000) persons must also analyze for man-made beta and photon emitters.</p>	<p>If gross alpha exceeds 5 pCi/l, analyze for radium-226.</p> <p>Monitor annually if radium-226 exceeds 3 pCi/l.</p>	<p>If less than 50% of the MCL, a single sample may be approved instead of quarterly samples.</p> <p>If gross alpha is less than 5 pCi/l at the 95 % confidence level, radium may be waived.</p>
<p>Synthetic organics</p> <p>APPLIES TO: Community; NTNC.</p> <p>Ref.: 40 CFR 141.24(h)</p>	<p>Monitor quarterly for pesticides and other synthetic organic contaminants unless granted a waiver. Sample each POE, representative of each source after treatment. These samples must be collected during the quarter which previously yielded the highest analytical results. If a system samples more frequently than annually, compliance shall be determined on the running annual average of all samples at each sampling point. If a system samples on an annual or less frequent schedule, compliance shall be determined on the average of an initial and confirmation sample.</p>		<p>The monitoring frequency may be reduced to annually. Waiver systems may apply to the state for a waiver from initial and repeat sampling frequencies. If the results of three years of sampling have no detections, the system may apply for a waiver from monitoring. These waivers must be renewed every 9 years. Waivers are contaminant specific and must be based upon a vulnerability assessment based on lack of use of the chemicals in the area or physical condition of the well and the area surrounding it.</p>
<p>Volatile organic compounds (VOCs) other than THMs</p>	<p>Sample at each POE, representative of each source after treatment. The monitoring shall consist of four consecutive quarterly samples during each three-year compliance period.</p>	<p>If contaminants are detected (>0.5ppb), sample quarterly at each point with a detection, beginning with the next quarter. Groundwater systems must sample for two</p>	<p>After a minimum of three years of annual sampling, a groundwater system with no previous detections of any contaminant may collect one sample each compliance period. Water systems may apply to the state for a waiver from initial and repeat sampling</p>

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
<p>APPLIES TO: Community; NTNC.</p> <p>Ref.: 40 CFR 141.24</p>	<p>All samples analyzed in a quarter must be used to average the quarter.</p>	<p>quarters and surface water systems must sample for four quarters to establish a baseline. If the results indicate that the sources are reliably and consistently below the applicable standard, the sampling frequency may be reduced to annually. These samples must be collected during the quarter which previously yielded the highest analytical results. If a system samples more frequently than annually, compliance is determined by either the running annual average of all samples at each sampling point or the average of an initial and confirmation sample.</p>	<p>frequencies. These waivers must be renewed for each compliance period. Waivers are contaminant specific and must be based upon a vulnerability assessment. Waivers may be granted based on lack of use of the chemicals in the area or physical condition of the well and the area surrounding it. If the results of initial monitoring have no detections, the system may apply for a waiver from monitoring. A waiver shall be effective for no more than six years. If a waiver is granted, groundwater systems must take one sample at each sampling point during the time when the waiver is effective (one sample each six years) and update its vulnerability assessment. Surface water systems which are granted a waiver shall monitor at a frequency determined by the state (if any) and update the systems's vulnerability assessment each compliance period.</p>
<p>Unregulated VOCs Listed at 40 CFR 141.40 (e) & (f)</p> <p>APPLIES TO: Community; NTNC</p>	<p>Sample each source at least once. The EPA requires data so they may determine whether to establish MCLs.</p>	<p>Confirmation of the presence of any volatile organic chemical in any source will require quarterly monitoring of that source.</p>	<p>Systems not vulnerable to potential contamination may obtain a waiver. A waiver may be granted if the contaminant has never been used in the area, or if previous analytical results indicate no detection of the chemical (<0.5 ug/l) and by considering environmental transport and persistence of the contaminant, number of persons served, and degree of wellhead or watershed protection.</p>
<p>Unregulated organic chemicals Aldicarb, Aldrin, Butachlor, Carbaryl, Dicamba, Dieldrin, 3-Hydroxycarbofuran, Methomyl, Metolachlor, Metribuzin, Propachlor</p> <p>APPLIES TO: Community;</p>	<p>Take four consecutive samples at each POE which is representative of each source after treatment. Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.</p> <p>Ref.: 40 CFR 141.40(n)</p>		

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring								
<p>Lead and copper</p> <p>NTNC</p> <p>APPLIES TO: Community; NTNC.</p> <p>Ref.: 40 CFR 141.86</p>	<p>Routine Monitoring</p> <p>Complete a materials evaluation of the distribution system to find a pool of target sites. Sample sites for lead and copper should contain copper pipes with lead solder installed after 1982 or lead pipes or lead service lines. Sample sites for community systems must be selected based on targeted single family structures (Tier 1) or multi-family structures (Tier 2) if they make up more than 20 % of the taps. Sample sites for NTNC systems shall consist of buildings which meet the same criteria as above. If the system is unable to find enough sites they may use sites constructed before 1983 (Tier 3). Community systems with insufficient Tier 1 or Tier 2 sites or NTNC systems with insufficient Tier 1 sites must document the lack of potential sites. Water systems with lead service lines must pull at least 50 % of their samples from lead lines and 50% from copper lines with lead solder or document why they cannot do so. Sample sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants. Samples must be first draw samples that have stood motionless in the lines for at least 6 hours. The sample shall be one liter in volume and taken from a kitchen or bathroom cold water tap. First draw samples from a non-residential building shall be collected at an interior tap from which water is typically drawn for consumption. Lead service line samples for single family residences may be taken after flushing until the water temperature changes. Follow-up samples must be taken at the same place as previous samples.</p> <p>Initial monitoring shall begin during the first year of operation of a new system. All systems must monitor for 2 consecutive 6 month periods. The number of sites:</p> <table border="0"> <tr> <td>System Size</td> <td>Sites</td> </tr> <tr> <td>> 100,000</td> <td>100</td> </tr> <tr> <td>10,001-100,000</td> <td>60</td> </tr> <tr> <td>3,301-10,000</td> <td>40</td> </tr> </table>	System Size	Sites	> 100,000	100	10,001-100,000	60	3,301-10,000	40	<p>Additional Monitoring</p> <p>All large systems and all medium and small systems which exceed the action levels for lead or copper must conduct corrosion control studies as required in 40 CFR 141 Subpart I.</p> <p>Systems which fail to meet the action levels for lead or copper at the tap must sample source water for lead and copper within 6 months. Any system which installs source water treatment must collect samples from each point of entry into the distribution system for 2 consecutive 6 month periods.</p>	<p>Reduced monitoring</p> <p>A small or medium system which meets the action levels or optimum range of water quality values for 2 consecutive 6 month periods may reduce the frequency of sampling to once per year. A small or medium system which meets the action levels or optimum range of water quality values for 3 years may reduce the frequency to once per 3 years. All samples must be taken from the pool of target sites and if the system monitors annually or less, the samples must be taken during June, July, August, or September.</p> <p>The number of sample sites is 1/2 of the number of routine sites, but not less than 5.</p> <p>All systems which are on reduced monitoring that exceed action levels or exceed water quality parameters must resume the standard monitoring frequency. Any additional monitoring sites will be used in calculation of the 90th percentile.</p>
System Size	Sites										
> 100,000	100										
10,001-100,000	60										
3,301-10,000	40										
<p>Lead and Copper, continued</p>											

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
<p>Water Quality Parameters pH, Alkalinity, etc.</p> <p>APPLIES TO: All large systems and those small and medium systems which exceed the action levels for lead or copper</p> <p>Ref.: 40 CFR 141.87</p>	<p>501-3,300 20 101-500 10 < 100 5</p> <p>Sample at sites representative of the distribution system during the monitoring period in which the action level was exceeded. Samples taken at the POE must be representative of each of the sources after treatment. Systems must collect 2 samples at each POE and 2 tap water samples during each monitoring period from:</p> <p>System Size Sites > 100,000 25 10,001 - 100,000 10 3,301 - 10,000 3 501 - 3,300 2 < 500 1</p> <p>The parameters are: 1. pH 2. Alkalinity 3. Orthophosphate (where added) 4. Silica (where added) 5. Calcium 6. Conductivity 7. Water temperature</p> <p>Monitoring at the tap following corrosion control, after the DEQ specifies the values for water control parameters, shall be the same as above. Collect 1 sample every 2 weeks at the POE for:</p> <ol style="list-style-type: none"> 1. Ph 2. dose rate for alkalinity adjustment 3. alkalinity 4. dose rate of inhibitor 5. orthophosphate (where added) 7. silica (where added) 		<p>The monitoring schedule shall be the same as in routine monitoring. The reduced number of sites for systems which maintain the range of values on the corrosivity chart for 2 consecutive 6 month periods is as follows.</p> <p>System Size Sites > 100,000 10 10,001 - 100,000 7 3,301 - 10,000 3 501 - 3,300 2 101 - 500 1 < 100 1</p> <p>Any system which does not exceed the lead and copper action level for 3 years, may reduce the sampling frequency to once per 9 years. Any system which fails to operate within the proper range must resume the standard sampling frequency.</p> <p>All PWS systems that lead and copper action levels, must resume the standard sampling frequency.</p> <p>All samples collected by the system shall be considered in making treatment determinations.</p>

DISINFECTANTS AND DISINFECTANT BY- PRODUCTS Ref.: 40 CFR 141.142

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
<p>Chlorine and chloramines APPLIES TO: Community; NTNC; non-community; minors</p>	<p>Systems must measure the residual disinfectant level at the same points in the distribution system and at the same time as total coliforms are sampled. Surface water system or groundwater under the influence of surface water serving at least 10,000 persons systems may use the results of residual disinfectant concentration instead of taking separate samples.</p>		
<p>Chlorite APPLIES TO: Community; NTNC</p>	<p>Systems that use chlorine dioxide for disinfection or oxidation must monitor for chlorite. Daily monitoring. Systems must take daily samples at each POE. For any daily sample that exceeds the chlorine MCL, the system must take additional samples in the distribution system the following day at the locations, in addition to the sample required at the entrance to the distribution system. Monthly monitoring. Systems must take a three-sample set each month in the distribution system. The system must take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling must be conducted in the same manner (as three-sample sets, at the specified locations). The system may use the results of additional monitoring to meet the requirement for monitoring.</p>	<p>On each day following a routine sample monitoring result that exceeds the chlorine MCL at the entrance to the distribution system, the system is required to take three chlorine distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).</p>	<p>Chlorite monitoring at the entrance to the distribution system may not be reduced. Chlorite monitoring in the distribution system may be reduced to one three-sample set per quarter after one year of monitoring where no individual chlorine sample taken in the distribution system has exceeded the chlorine MCL and the system has not been required to conduct additional monitoring. The system may remain on the reduced monitoring schedule until either any of the three individual chlorine samples taken quarterly in the distribution system exceeds the chlorine MCL or the system is required to conduct additional monitoring, at which time the system must revert to routine monitoring.</p>
<p>Chlorine Dioxide APPLIES TO: Community; NTNC; Non-community.</p>	<p>Systems that use chlorine dioxide for disinfection or oxidation must sample daily at the POE. For any daily sample that exceeds the MRDL, the system must take additional samples in the distribution system the following day, in addition to the sample required at the POE.</p>	<p>On each day following a routine sample monitoring result that exceeds the MRDL, the system is required to take three chlorine dioxide distribution system samples. If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the</p>	

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
<p>Chlorine Dioxide, continued</p>		<p>distribution system and there are no disinfection addition points after the entrance to the distribution system (i.e., no booster chlorination), the system must take three samples as close to the first customer as possible, at intervals of at least six hours. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one or more disinfection addition points after the entrance to the distribution system (i.e., booster chlorination), the system must take one sample at each of the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).</p>	
<p>Bromate APPLIES TO: Community; NTNC.</p> <p>TTHM and HAAS APPLIES TO: Community systems over 10,000 pop. that disinfect Ref.: see also 40 CFR 141.30</p>	<p>Systems that use ozone for disinfection or oxidation must take one sample per month for each treatment plant using ozone. Sample monthly at the POE while the ozonation system is operating under normal conditions.</p> <p>Average all samples analyzed during the quarter for that quarter. Compliance is determined from the mean of the most recent four (4) quarterly averages of samples (the running annual average). Systems must analyze TTHM on a basis of at least four samples under an approved site plan per quarter</p>		<p>Systems with an average source water bromide concentration of less than 0.05 mg/L based upon representative monthly bromide measurements for one year may reduce monitoring from monthly to once per quarter. The system may remain on reduced bromate monitoring as long as the running annual average of quarterly source water bromide concentration, is not greater than 0.05 mg/L.</p> <p>After one year of data collection, ground water systems with a TTHM potential less than 0.10 mg/l may be reduced to one set of samples per year.</p>

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
<p>TTHM and HAA5 APPLIES TO: Surface water system or groundwater under the influence of surface water serving at least 10,000 persons</p>	<p>Collect four water samples per quarter per treatment plant. At least 25 percent of all samples collected each quarter must be from locations representing maximum residence time. Take the remaining samples at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account number of persons served, different sources of water, and different treatment methods.</p>		<p>Systems with a source water annual average TOC level < 4.0 mg/L before any treatment may reduce monitoring if they have monitored at least one year and the annual average of TTHM < 0.040 mg/L and HAA5 < 0.030mg/L may reduce monitoring to one sample per treatment plant per quarter at a distribution system location reflecting maximum residence time. Systems may remain on that reduced schedule as long as the average of all samples taken in the year is no more than 0.060 mg/L TTHM and 0.045 mg/L HAA5. Systems that exceed these levels must resume routine monitoring in the quarter immediately following the exceedance.</p>
<p>TTHM and HAA5 APPLIES TO: Surface water system or groundwater under the influence of surface water serving from 500 to 9,999 persons</p>	<p>One water sample per quarter per treatment plant at locations representing maximum residence time.</p>		<p>Systems with a source water annual average TOC level < 4.0 mg/L before any treatment may reduce monitoring if they have monitored at least one year and your TTHM annual average < 0.040 mg/L and HAA5 annual average < 0.030mg/L to one sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature. NOTE: any surface water system or groundwater under the influence of surface water serving fewer than 500 persons may not reduce its monitoring to less than one sample per treatment plant per year. Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year is no more than 0.060 mg/L TTHMs and 0.045 mg/L HAA5. Systems that exceed these levels must resume routine monitoring in the quarter immediately following the exceedance.</p>
<p>TTHM and HAA5 APPLIES TO: Surface water system or</p>	<p>One sample per year per treatment plant during month of warmest water temperature at locations representing maximum residence time</p>	<p>If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample</p>	<p>Systems with a source water annual average TOC < 4.0 mg/L level before any treatment, have monitored at least one year and have annual average < 0.040 mg/L TTHM and < 0.030mg/L HAA5 may</p>

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
<p>groundwater under the influence of surface water serving fewer than 500 persons</p>		<p>per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets reduced monitoring criteria</p>	<p>reduce monitoring to one sample per treatment plant per year at distribution system location reflecting maximum residence time during the month of warmest water temperature. Systems may remain on that reduced schedule as long as the sample does not exceed 0.060 mg/L TTHMs and 0.045 mg/L HAA5. Systems that do not meet these levels must resume routine monitoring in the quarter immediately following the exceedance.</p>
<p>TTHM and HAA5 APPLIES TO: System using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons</p>	<p>One water sample per quarter per treatment plant at locations representing maximum residence time.</p>		<p>Systems that have monitored at least one year and their annual average <0.040 mg/L TTHM and <0.030mg/L HAA5 may reduce monitoring to to one sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature. Systems may remain on that reduced schedule as long as the sample does not exceed 0.060 mg/L TTHMs and 0.045 mg/L HAA5. Systems that do not meet these levels must resume routine monitoring in the quarter immediately following the exceedance.</p>
<p>TTHM and HAA5 APPLIES TO: System using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons</p>	<p>One sample per year per treatment plant during month of warmest water temperature at locations representing maximum residence time.</p>	<p>If the sample exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets the MCL.</p>	<p>Systems that have monitored at least one year and have an annual average <0.040 mg/L TTHM and <0.030mg/L HAA5 for two consecutive years OR TTHM annual average <0.020 mg/L and HAA5 annual average <0.015mg/L for one year may reduce monitoring to one sample per treatment plant per three year monitoring cycle at distribution system location reflecting maximum residence time during month of warmest water temperature, with the three-year cycle beginning on January 1 following quarter in which system qualifies for reduced monitoring. Systems may remain on that reduced schedule as long as the sample does not exceed 0.060 mg/L TTHMs and 0.045 mg/L HAA5. Systems that do not meet these levels must resume routine monitoring in the quarter immediately following the exceedance.</p>
	<p>Systems which disinfect and use conventional filtration</p>		<p>Systems with an average treated water TOC of less</p>

Contaminant	Routine Monitoring	Additional Monitoring	Reduced monitoring
<p>Disinfection By-Product Precursors (TOC)</p> <p>APPLIES TO: Community; NTNC.</p> <p>Ref.: 40 CFR 141.141e</p>	<p>treatment must monitor each treatment plant for TOC no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. All systems required to monitor must also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. These samples (source water and treated water) are referred to as paired samples. At the same time as the source water sample is taken, all systems must monitor for alkalinity in the source water prior to any treatment. Systems must take one paired sample and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.</p>		<p>than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, may reduce monitoring for both TOC and alkalinity to one paired sample and one source water alkalinity sample per plant per quarter. The system must revert to routine monitoring in the month following the quarter when the annual average treated water TOC ≥ 2.0 mg/L.</p>

APPENDIX C. PUBLIC NOTICE REQUIREMENTS [REVOKED]

Violation Category	Public Notice	Method
<p>ONE, 24-hour notice: MCL for total coliforms, when fecal coliform or E. coli are present; or failure to test for fecal coliform or E. coli after total coliform are confirmed. MCL for nitrate, nitrite or combined nitrate-nitrite. MRDL for chlorine dioxide samples from the distribution system; or failure to take samples. Waterborne disease outbreak. Other violations or situations with potential for serious adverse human health effects from long-term exposure.</p>	<p>PWS systems must give notice within 24 hours after learning of a Category One violation.</p> <p>Posted notices must remain while the violation exists.</p>	<p>PWS systems must consult with the DEQ within 24 hours after learning of a violation to determine the approved form and manner of public notification.</p> <p>Give notice in a form and manner reasonably calculated to reach the users within 24 hours.</p> <p>To reach all persons served, do one or more of the following: broadcast in appropriate media (such as radio and television); post the notice in conspicuous locations; or hand deliver notice to users.</p>
<p>TWO, 30-day notice: All violations of MCL, MRDL and treatment technique requirements not included in Category One. Monitoring and testing procedure violations. Other violations where DEQ determines that public notice may be needed due to potential health impacts and persistence of the violation.</p>	<p>PWS systems must give notice within 30 days after learning of a Category Two violation. Repeat the notice every 3 months unless otherwise authorized by the DEQ (but not less frequent than once per year). Posted notices must remain while the violation exists.</p>	<p>Give notice in a form and manner reasonably calculated to reach the users, including publishing in a daily newspaper of general circulation, within 30 days. The form and manner of the public notice may vary based on the specific situation and type of water system, but must meet the following minimum requirements unless otherwise directed by the DEQ:</p> <p>Community Mail or direct delivery to each customer. Any other method determined to reach users that might not receive mail or direct delivery.</p> <p>Non-community Post notice in conspicuous locations frequented by users. Mail or direct delivery to each customer. Any other method determined to reach users that might not receive other notice.</p>
<p>REE, yearly notice: Monitoring violations, unless the DEQ determines they require Category Two public notice. Failure to comply with a testing procedure. Fluoride secondary standards violations. Lead and copper action level violations. Any other violations or situations determined by DEQ to require Category Three public notice.</p>	<p>PWS systems must give notice within one year after learning of a Category Three violation. Repeat the notice at least annually while the violation or situation exists.</p>	<p>Give notice in a form and manner reasonably calculated to reach the users, annually. The form and manner of the public notice may vary based on the specific situation and type of water system, but must meet the following minimum requirements unless otherwise directed by DEQ:</p> <p>Community Mail or direct delivery to each customer. Any other method determined to reach users that might not receive mail or direct delivery.</p> <p>The Consumer Confidence Report may be used for the Category Three yearly and repeat notices, as long as the CCR is provided to all customers no later than 12 months after the system learns of the violation and has the proper form and content.</p> <p>Non-community Post notice in conspicuous locations frequented by users. Mail or direct delivery to each customer. Any other method determined to reach users that might not receive other notice.</p>

[OAR Docket #02-1436; filed 11-6-02]
(format accepted 11-12-02)

Emergency Adoptions

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH

[OAR Docket #02-1420]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 7. Additional Procedures for Administrative Penalty Proceedings

Part 1. Environmental Health Penalties

310:2-7-3. Determining penalty [AMENDED]

AUTHORITY:

Oklahoma State Board of Health; 51 O.S. § 24A.5(5), 2001 OK Laws, SB948

DATES:

Comment Period:

August 15, 2002 through September 19, 2002

Public Hearing:

September 19, 2002

Adoption:

September 19, 2002

Approved by Governor:

October 29, 2002

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2003, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The State Board of Health finds that compelling extraordinary circumstances exist due to the Department's receipt of hundreds of open record requests requiring a detailed processing procedure to avoid undue disruption of essential agency services and possible litigation. Furthermore, in view of the recent passage of the Oklahoma Small Business Regulatory Flexibility Act and changes made to the Oklahoma Administrative Procedures Act as it relates to the impact of the agency's actions upon small businesses, compelling extraordinary circumstances exist necessitating revisions of the procedures governing the determination of administrative penalties to prevent a conflict with provisions of Senate Bill 948.

ANALYSIS:

The amendments to Subchapter 3 provide for filing procedures for open record requests, and to establish criteria to determine if a request is sufficiently defined to be processed, if a search fee may be required, if a request can be processed, and if the request is denied, what the appeal procedures are. Fees relating to the actual reproduction cost to the agency for specific items are established. Amendments to Subchapter 7 provide for criteria the Department may consider in its determination to waive or reduce any administrative penalty proposed to be assessed against a small business entity.

CONTACT PERSON:

Charles Broadway, Office of General Counsel, (405) 271-6017

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING EMERGENCY RULES ARE
CONSIDERED PROMULGATED AND EFFECTIVE
UPON APPROVAL BY THE GOVERNOR AS SET
FORTH IN 75 O.S., SECTION 253(D):**

SUBCHAPTER 7. ADDITIONAL PROCEDURES FOR ADMINISTRATIVE PENALTY PROCEEDINGS

PART 1. ENVIRONMENTAL HEALTH PENALTIES

310:2-7-3. Determining penalty

(a) **In general.** The following factors may be considered in determining the amount of penalty specified in an Administrative Compliance Order:

- (1) the value of efforts to comply with the regulations cited in the notice of violation;
- (2) the economic benefit to the violator of noncompliance with the regulations in question; and
- (3) an additional amount for deterrence purposes, based upon

(~~a~~) the likelihood of the development of adverse health effects caused by the violation,

(~~b~~) the severity of environmental degradation or public health effects caused or placed at risk by the violation,

(~~c~~) the degree of variance from the applicable standards,

(~~d~~) costs of correction of damage, and

(~~e~~) bad faith of the Respondent.

(b) **Small businesses.** If the violator is a "small business" as defined in 75 O.S. § 502, or is a for-profit enterprise consisting of fifty or fewer full-time or part-time employees, the following additional factors may be considered in determining the amount of penalty specified in an Administrative Compliance Order, and whether the penalty should be reduced or waived altogether:

(1) the small business corrects the violation within thirty (30) days or less after receipt of a notice of violation or citation; or

(2) the violation was the result of an excusable misunderstanding of the Department's interpretation of a rule.

[OAR Docket #02-1420; filed 11-5-02]

(format accepted 11-12-02)

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

[OAR Docket #02-1400]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 2. Temporary Assistance for Needy Families (TANF) Work Program

340:10-2-8 [AMENDED]

(Reference APA WF # 02-22)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Section 230.65 of Title 56 of the Oklahoma Statutes; and the Personal Responsibility and Work Opportunity Act of 1996.

DATES:

Adoption:

September 24, 2002

Approved by Governor:

October 16, 2002

Effective:

December 1, 2002

Expiration:

Effective through July 14, 2003, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Emergency approval is requested as the Agency finds that because of insufficient participation allowances imminent peril exists to the preservation of the public health, safety, and welfare of families with adults participating in required TANF Work activities. The Agency also finds a compelling public interest exists to provide increased supportive services to ensure successful completion of the participant's employability plan to become self-sufficient.

ANALYSIS:

The purpose of the proposed rule is to increase the participation allowances to TANF recipients who are in an assigned TANF Work activity. This increase reflects a more accurate reimbursement rate to these recipients. This reimbursement rate is consistent with the anticipated increase in the required hours of participation in proposed TANF reauthorization. OAC 340:10-2-8 is revised to increase the participation allowance from \$3 a day to \$5 a day for four hours or less of TANF Work activity and from \$6 a day to \$8 a day for more than four hours of TANF Work activity. In addition, the title of social services specialist is changed to worker.

CONTACT PERSON:

Dena Thayer at (405)521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF DECEMBER 1, 2002:

SUBCHAPTER 2. TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF) WORK PROGRAM

340:10-2-8. Temporary Assistance for Needy Families (TANF) Work support services

(a) **Scope.** The ~~social services specialist~~ worker provides or arranges payments and services for the participant to ensure successful completion of his or her employability plan to become self-supporting. Payments are authorized for items or services directly related to employment as an outcome. When support services are available and part of the employability plan, the participant's failure to cooperate in obtaining the support services constitutes a failure to participate in the TANF Work program. Items and services covered by the participant's medical card are not paid for by the support service funds. The only support services available to an applicant are the participant allowance and work activity payment.

(b) **Flexible fund accounts.** The intent of the flexible fund account is to provide a participant with the necessary support services needed to accomplish his or her employment goals. Flexible funds are not available to an applicant. To be eligible for flexible funds, the individual must either be otherwise ready to participate in a required work activity for the minimum number of hours, have a guaranteed offer of employment, or be employed. Payments for the services through flexible funds

are not an automatic entitlement to the participant. Flexible funds are not used for fines including traffic fines or any cost related to a criminal offense such as legal fees or court costs. The county staff has final authority to determine authorizations. One-time payments of specific services are allowed after the service is rendered. Ongoing maintenance payments are not allowed. The provider is paid no later than five days from the date of receipt of the properly completed invoice in the ~~Office of Finance~~ Division.

(c) **Other support services.**

(1) **Work activity payments.** To be eligible for the work activity payment, the individual must be ready to participate in or be in a required work activity and in need of a small amount of cash to purchase items such as a tank of gas, health, beauty, or personal items. The maximum amount approved cannot exceed \$30 per month.

(2) **Participant allowances.** Allowances are made to participants in assigned work activities, up to a maximum of ~~\$68~~ for each day. Lunch hours and travel time are not included as actual hours of attendance. For persons in Job Search, travel time between job interviews and job applications is included as actual hours of attendance. Participant allowances are not paid when the participant is employed or participating through the Workforce Investment Act (WIA). The participant makes appropriate daily entries on Form TW-13, Time and Progress Report, which documents actual hours in attendance. The daily allowance is determined in the manner given in (A) - (B) of this paragraph.

(A) An allowance of ~~\$35~~ each day is paid when the work activity equals four hours or less.

(B) An allowance of ~~\$68~~ each day is paid when the work activity equals more than four hours.

(3) **Oklahoma State Bureau of Investigations (OSBI) background checks.** OSBI background checks may be requested for a participant who is being placed in a public or private sector work experience position that requires an OSBI background check as a prerequisite for employment. The participant is advised of the requirement and a Form Adm-60, Request for Release of Information, is completed. When the OSBI report is received in the county office, it is forwarded to the requesting facility.

(4) **Child care.** Child care arrangements are made for each child in the home who is under age 13, mentally or physically incapable of self care, or under court supervision. The plans for child care are included in the employability plan. When the individual begins active participation in TANF Work activities, child care services are documented.

(5) **Transportation contracts.** Transportation contracts are initiated to provide transportation for TANF recipients who have no means of transportation to access required TANF Work training activities. To initiate a transportation contract, contact the State Office, Family Support Services Division, TANF Section.

(6) **Individual Development Accounts (IDA IDAs).** IDAs are dedicated savings accounts that are used for a

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qualified purpose such as purchasing a first home, education or job training expenses, capitalizing a small business, or other purposes designated by the IDA administrative entity. IDAs are managed by community organizations and accounts are held at local financial institutions. An IDA can be established by an individual or on behalf of a child eligible for TANF assistance for a qualified purpose. Cash deposits and interest accrued from the deposits made by an individual in an IDA up to \$2,000 are not considered as income or resources in determining TANF eligibility. The account deposits must be made from earned income, earned income tax credits, or tax refunds. Deposits made by an individual into an IDA are matched in a separate account by public and private funds. All participants may receive training in economic literacy, budgeting, money management, and business and home ownership as developed by the administrative entity.

(7) **Disability Advocacy Program (DAP).** ~~The Disability Advocacy Program~~ DAP is available to assist a TANF recipient, adult or child, who has an application for disability pending with the Social Security Administration (SSA). The program is also available for a TANF recipient, adult or child, who does not have an application pending with SSA but who Department of Human Services (DHS) determines has a potentially meritorious claim for such benefits. A referral is made to the DHS contracted law firm to assist the recipient(s) with the application, reconsideration, Administrative Law Judge hearing, and review by the SSA Appeals Council. The evaluation of merit determines if the appropriate SSA test for disability would be met if evidence were available to prove all conditions claimed by the TANF recipient. If the evaluation of merit determines there is sufficient evidence, the law firm will represent the TANF recipient. Statewide this representation consists of assisting the recipient with the application through an unfavorable decision by the SSA Appeals Council. In counties in which representation by a lawyer or experienced non-lawyer advocate is not available without advanced payment, the contracted law firm assists with the pending application for disability through an unfavorable decision by the SSA Appeals Council. If the evaluation of merit determines there is insufficient evidence to prove conditions claimed by the TANF recipient, no further services are provided by DAP. Representation by the law firm ceases at any time the law firm determines there is insufficient evidence to support the TANF recipient's claim for disability benefits.

[OAR Docket #02-1400; filed 10-31-02]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 75. CHILD WELFARE

[OAR Docket #02-1398]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:

Subchapter 1. General Provisions
Part 1. Scope and Applicability
340:75-1-9 [AMENDED]
340:75-1-16 [AMENDED]
340:75-1-18.1 [AMENDED]
340:75-1-20 through 340:75-1-21 [AMENDED]
Subchapter 6. Permanency Planning
Part 7. Case Plans
340:75-6-40.5 [AMENDED]
Part 11. Permanency Planning and Placement Services
340:75-6-85 [AMENDED]
340:75-6-86 [AMENDED]
(Reference APA WF # 02-23)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Senate Bills 1329 and 1661.

DATES:

Adoption:

September 24, 2002.

Approved by Governor:

October 16, 2002

Effective:

Immediately upon Governor's approval.

Expiration:

Effective through July 14, 2003, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

Emergency approval is requested as the Agency finds compelling public interest to preserve the health, safety, and welfare of children. New legislation has been enacted that directs DHS and became effective immediately after the bills were signed or will become effective November 1, 2002. These rules provide the knowledge and direction necessary to implement programs that will provide permanency for children and families. Without the expansion of the rules to include these programs, some children in DHS custody will continue to remain in the DHS system without permanency, thereby placing them in imminent peril.

ANALYSIS:

The proposed revisions to Subchapters 1 and 6 of Chapter 75 comport with state and federal mandates and policy format guidelines and incorporate amendments to statute regarding: the time frame for filing a petition for termination in situations where a child has been in out-of-home care 15 of the most recent 22 months; placement preferences to include foster parent(s); permanency hearings every 12 months while a child is in out-of-home care; six-month post adjudication review board (PARB) reviews for cases where the child is alleged to be deprived; and notification to the court when a child is removed from an out-of-home placement. These statutory amendments are now in effect or will be effective November 1, 2002. • 340:75-1-9, regarding filing a petition for termination in cases where children have been in out-of-home care 15 of the most recent 22 months, is revised to include that filing is done prior to the end of the 15 month, and that permanency hearings are held every 12 months; • 340:75-1-16, regarding placement of children, is revised to include foster parent(s) in the order of placement preferences; • 340:75-1-18.1, regarding permanency hearings, is revised to include the requirement of permanency hearings every 12 months while a child is in out-of-home care; • 340:75-1-20, regarding the six-month judicial review, is revised to include the requirement that reviews begin no later than six months after a child has been in out-of-home placement; • 340:75-1-21, regarding reviews conducted by the PARB, is revised to include the requirement that cases where the child is alleged to be deprived are reviewed after the child has been in out-of-home care for six months; • 340:75-6-40.5 is revised to include the statutory requirement that review hearings are held no later than six months after a child's placement in out-of-home care; • 340:75-6-85 is revised and clarified by deleting paragraph (f)(1) regarding written notice of removal, and moving paragraph (f)(2), regarding the foster parent(s) objection to the child's removal, to 340:75-6-86; and • 340:75-6-86 is revised to include clarification that: notification to foster parent(s) and court occurs five judicial days before removal, except in cases of emergency; the court is notified when a child is removed from foster care; and a foster parent(s)' objection to the child's removal is filed with the court within five judicial days.

CONTACT PERSON:

Dena Thayer, Policy Management Unit, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D):

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. SCOPE AND APPLICABILITY

340:75-1-9. Legal base and authority

(a) Authority. The authority of the Department of Human Services (DHS) to administer a Child Welfare (CW) program is based on the Oklahoma Social Security Act [Section 176 of Title 56, Oklahoma Statutes] which authorizes the Department DHS to provide . . . for the protection and care of homeless, dependent and neglected children, and children in danger of becoming delinquent.

(1) The Oklahoma Children's Code, Chapter 70 of Title 10 of the Oklahoma Statutes, provides the legal base for the care and custody of children.

(2) Federal laws and regulations under Titles IV-B, IV-E, V, VI, XIX, and XX of the Social Security Act, as amended, as well as decisions made by the Oklahoma Commission for Human Services, further define the scope and authority of services provided by CW.

(b) The Multiethnic Placement Act of 1994 and the Interethnic Adoption Provisions of 1996. The Multiethnic Placement Act of 1994 (MEPA), as amended by the Interethnic Adoption Provisions of 1996 (IEP), was enacted to eliminate discrimination on the basis of race, color, or national origin, in the placement of children in foster care and adoption adoptive resources, decrease the length of time that children wait to be adopted, and facilitate the identification, recruitment, and retention of foster and adoptive parents who can meet the distinctive needs of children awaiting placement. The MEPA/IEP prohibits states or agencies receiving federal funds from delaying or denying the placement of any child on the basis of the race, color, or national origin of the child or the prospective foster or adoptive parent.

(1) Placement considerations. Any consideration of race or ethnicity is narrowly tailored to advancing the child's best interest interests and is made as an individualized determination for each child. The Department DHS may not delay or deny the placement of a child for adoption or foster care on the basis of the race, color, or national origin of the child or the adoptive or foster parent. A child who meets the definition of an "Indian child" as per the Indian Child Welfare Act is placed according to the placement preferences. [OAC 340:75-7-10 and 340:75-19-14]

(2) Recruitment. MEPA/IEP requires that the Department DHS engage in active recruitment of potential foster and adoptive parents who reflect the racial and ethnic

diversity of the children in care needing placement. A comprehensive recruitment plan is developed and updated annually. [OAC 340:75-15-82 and 340:75-7-10(e)]

(c) The Adoption and Safe Families Act of 1997. The Adoption and Safe Families Act of 1997 (ASFA) was enacted to amend Title IV-B and Title IV-E of the Social Security Act. The act focuses on promoting child safety, timely decision making as to permanency, and clarifying "reasonable efforts." Key provisions of the law include:

(1) a clarification of "reasonable efforts," including a provision that reasonable efforts to reunify a child with his or her birth parent(s) are not required if a court has determined that any of the conditions exist as set out in Section 7003-4.6 of Title 10 of the Oklahoma Statutes;

(2) mandatory termination of parental rights in certain circumstances, including a requirement directing the initiation of termination proceedings prior to the end of the 15th month when a child has for all children who have been in out-of-home care for 15 of the most recent 22 months; and

(3) a requirement that a permanency hearing is held no later than every 12 months after a child is placed in out-of-home care or 30 days after a court determines that reasonable efforts to reunite a family are not required and every 12 months thereafter.

340:75-1-16. Custody hearing

(a) The procedures for custody hearings are described in (1) and (2) of this subsection.

(1) When a child is taken into emergency or protective custody as an alleged deprived child, the child's parents parent(s), legal guardians guardian(s), or custodians custodian(s) are entitled to an emergency custody hearing within two judicial days following the child being taken into emergency or protective custody, and thereafter at such intervals as determined by the court. The court conducts a hearing to:

(A) determine whether the child is placed or remains in custody if continuation of the child in the child's home is contrary to the health, safety, or welfare of the child;

(B) determine whether the child is released to the parent parent(s), legal guardian guardian(s), custodian custodian(s), or other responsible adult with or without conditions as the court finds reasonably necessary to insure the health, safety, or welfare of the child.

(i) If a child has been removed from the custodial parent and, in the best interests of the child, the court is unable to release the child to the custodial parent, the court shall give priority for placement of the child with the noncustodial parent of the child unless such placement would not be in the child's best interests.

(ii) If the court cannot place the child with the noncustodial parent, custody is awarded consistent with the preferences set forth in Section 21.1 of Title 10 of the Oklahoma Statutes which

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are: grandparent, person indicated by deceased parent, relative, the person in whose home the child has been living in a wholesome and stable environment, including, but not limited to, a foster parent(s), or any other person deemed suitable by the court and able to provide adequate and proper care and guidance for the child. If custody of the child cannot be made pursuant to these preferences, the reason for such determination is documented in the court record; and

(C) obtain information from the parent, legal guardian, or custodian necessary to identify and locate kinship placement resources.

(2) The court may order the Department of Human Services (DHS) to provide supervision of the child if the court returns the child to the custody of a parent, relative, or other responsible party. The purpose of the emergency custody hearing is to show cause why the child was taken into custody or why custody should not return to the ~~parents~~ parent(s). An order for removal of a child from the home must make a determination that continuation of the child in his or her home is contrary to the child's health, safety, or welfare or is in the child's best ~~interest~~ interests and whether reasonable efforts to prevent removal were made or in the absence of preventive efforts, if removal of the child is due to an emergency and is for the child's safety. [10 O.S. § 7003-2.4(G)(1)(a) through (d)] The emergency custody hearing order cannot remain in effect for more than 60 days absent a showing that future extension is necessary to ensure the health, safety, or welfare of the child and is in the best interests of the child. The judge may also enter an order that reasonable efforts are not required. [OAC 340:75-1-18.4]

(b) At any hearing where a child is to be released from the state's custody, whether protective, emergency, or temporary custody, the district attorney or the child's attorney may give verbal notice of an objection and intention to seek review of the court's order. The court then stays the order pending the filing of an application by the objecting attorney, which must be filed within three judicial days from the order. When the application is filed timely, the presiding judge assigns a juvenile judge within the judicial district for review. The review addresses only whether releasing the child from state custody is contrary to the health, safety, or welfare of the child. If the reviewing judge finds that releasing the child from state custody is contrary to the health, safety, or welfare of the child, the court issuing the original order must enter a different order. If the finding is that the original order is not contrary to the health, safety, or welfare of the child, the stay is lifted and the child released per the court's order. [10 O.S. § 7003-6.2]

(c) At any hearing under the Oklahoma Children's Code [10 O.S. § 7003-6.2(A)] for the purpose of determining whether a child in the state's custody, whether protective, emergency, or temporary custody, is to be released from such custody, the court provides an opportunity for a representative from ~~the Department DHS~~, the current foster ~~parent~~ parent(s), guardian ad litem, and child, if of sufficient age, to present sworn testimony regarding this release. The Child Welfare (CW) worker may be

cross-examined by the court and the parties to the case. These hearings are on the record and the court must issue a written finding. ~~The Department DHS~~ does not have the same right to be heard when the district attorney is declining to file a petition and the child is released by operation of law.

340:75-1-18.1. Permanency hearings

(a) ~~Court considerations. The court conducts a permanency hearing to consider the issue of permanency for the child no later than 12 months after placing a child in out-of-home care and every 12 months thereafter or 30 days after a determination that reasonable efforts are not required.~~ ~~1 & 2 The court conducts a permanency hearing to consider the child's need for a secure and permanent placement in light of any permanency plan or evidence submitted to the court.~~ **Permanency hearing.** Oklahoma statutes comply with federal regulations and set out certain requirements for permanency hearings. Permanency hearings are held for every case regarding a child alleged or adjudicated to be deprived no later than 12 months from the date of the child's placement in out-of-home care or 30 days after a determination that reasonable efforts are not required and at least every 12 months thereafter. The responsibility for conducting the permanency hearing resides with the court. [10 O.S. § 7003-5.6(d)] The Department of Human Services (DHS) ensures that the Child Welfare (CW) workers provide the court with the necessary information to conduct the hearing.

(b) **Permanency meeting.** At least three weeks prior to a permanency hearing, the court-appointed special advocate (CASA) assigned to the case or, if there is no CASA assigned, the ~~Child Welfare (CW)~~ worker arranges for a meeting to prepare a report regarding the child for the court's review. However, this does not apply to 30 day permanency hearings scheduled when the court makes a finding that reasonable efforts are not required. ~~The CASA or CW worker contacts the current foster parents for the child, the parents of the child or the parents' attorney, a post adjudication review board member, the guardian ad litem appointed to the case, if applicable, and the child's attorney to assist in preparation of the report. The report contains the efforts and progress demonstrated by the child's parent to complete an individual treatment and service plan, extent to which the parent or legal guardian cooperated and used the services provided, status of the child, including the child's mental, physical, and emotional health, and the plan for permanency for the child. A permanency hearing may be held concurrently with a dispositional or review hearing.~~

(c) **Notification of hearing and opportunity to be heard.** Prior written notice of the hearing is provided by ~~the Department DHS~~ to the present foster parents parent(s) of the child, any pre-adoptive parent, or relative caring for the child and the child's guardian ad litem. An opportunity to be heard is provided by the court. Such notice and opportunity to be heard shall not be construed as requiring any foster parent, pre-adoptive parent, or relative to be made a party to such action. ~~The court considers, at a minimum, the health and safety or welfare of the child and whether it is in the best interests:~~

(1) ~~for the child to continue in out-of-home placement for a specified period;~~

- (2) for the child to be returned home. If returning home remains the plan for the child, the court must find that the conditions required by 10 O.S. § 7003-5.6d(D)(2) exist and that continued placement of the child outside the home will not exceed three months; [OAC 340:75-1-20]
- (3) to file a petition to terminate the parental rights of the parent and place the child for adoption;
- (4) if the child has been placed in out of home placement, for the child to remain in that placement if it continues to be safe and appropriate;
- (5) for the child to be placed in a planned permanent living arrangement if the Department has documented a compelling reason that it is not in the best interests of the child to return home, be placed for adoption, be placed with a fit and willing relative, or a legal guardian; or
- (6) if a child is to be placed for adoption, for the foster parents to be considered eligible to adopt the child. [OAC 340:75-15-83]

(b) **Required findings.** Upon completion of the permanency hearing, the court enters written findings and makes a determination best serving the long term interests of the child's health, safety, or welfare. At the permanency hearing, the court enters an order to:

- (1) return the child to the child's home and set a specific date for the return of the child;
- (2) continue placement of the child for an additional period; and
 - (A) enumerate the specific factors, conditions, or expected behavioral changes which must occur within the additional three month period before the child may be returned home;
 - (B) the reasons for such extension; and
 - (C) set a hearing date not to exceed three months to consider modification of the permanency order.
- (3) approve the plan for guardianship or kinship guardianship for the child;
- (4) order the placement of the child in a planned living arrangement; or
- (5) order the Department to complete all steps necessary to finalize the permanent placement of the child.

340:75-1-20. Six month judicial review

There must be a review of every dispositional order case regarding an alleged or adjudicated deprived child every six months. Section 7003-5.6 of Title 10 of the Oklahoma Statutes requires that a review hearing be held within no later than six months after the first dispositional hearing date of the child's out-of-home placement and at least every six months thereafter until such time as the child is returned to the custody of the parent(s), legal guardian(s), or custodian(s) and the conditions which caused the child to be adjudicated deprived have been corrected, permanent care and custody has been awarded to a suitable eustodian-custodian(s) or kinship guardian-guardian(s), or the parents' parent(s) rights have been terminated and final adoption decreed. This requirement applies to a child removed from the home of the lawful parent(s), legal guardian(s), or custodian(s) of the child after the child has

been returned to that home until such time as the court orders the case closed.

(1) **Judicial review report.** The report is prepared by the legal eustodian-custodian(s) of the child. When the Department of Human Services (DHS) has court-ordered supervision of the child, the Department DHS is responsible for preparing the report. The report includes a summary of the parents' parent(s)' current situation, the physical, mental, and emotional condition of the child, the conditions existing in the home or institution where the child has been placed, the child's adjustment, a report on the child's progress in school, and visitation exercised by the child's parents parent(s) or other persons authorized by the court. For youth 16 years or older the independent living services that have been provided since the last court hearing or court review must be addressed. When the Department DHS is the legal custodian of the child, the report includes any efforts on the part of the parent or parents parent(s) to correct the conditions which caused the child to be adjudicated deprived. The court's determination is based upon the report; therefore, it must specifically address, recommend, and provide reasons, whether:

- (A) the child should be returned to the child's parent parent(s) or placed with willing and suitable kinship relations;
- (B) the child should continue in out-of-home placement for a specified period. The court projects a likely date by which the child may be returned to and safely maintained in the home, placed with a suitable guardian-guardian(s) or eustodian-custodian(s), or placed for adoption or other permanent arrangement;
- (C) the rights of the parents parent(s) of the child should be terminated and the child placed for adoption, placed with a guardian-guardian(s) or eustodian-custodian(s), or provided with another permanent arrangement;
- (D) the child, because of exceptional circumstances, should remain in long-term out-of-home placement as a permanent plan or with a goal of independent living;
- (E) reasonable efforts have been made to provide for the safe return of the child to the child's home;
- (F) reasonable efforts are being made to place the child in a timely manner in accordance with the permanency plan and to complete the steps necessary to finalize permanent placement for the child if the court determines or has previously determined that reasonable efforts are not required or that the continuation of reasonable efforts to reunite the child with the child's family is inconsistent with the permanency plan;
- (G) where appropriate, when the child is 16 years of age or older, services are being provided that will assist the child in making the transition from foster out-of-home care to independent living;
- (H) the nature and extent of the services being provided to the child and parent(s) of the child ensure the safety of the child and protection from further physical, mental, or emotional harm, and if necessary,

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order additional services be provided to correct the conditions that led to the child's adjudication; and

(I) to modify the existing individual treatment and service plan as the court determines it is in the best interests of the child and necessary for the correction of the conditions that led to the adjudication of the child.

(2) **Review hearing.** At the review hearing the Child Welfare (CW) worker provides information similar to that offered at the initial dispositional hearing, with special emphasis on the progress or lack of progress on the court-ordered treatment plan. The court ~~is to receive~~ receives all evidence helpful in determining the issues before the court, including but not limited to, oral and written reports, which may be admitted and relied upon to the extent of their probative value, even though not competent for purposes of an adjudicatory hearing.

(3) **Notice of hearing.** Written notice of review hearings to ~~the~~ pre-adoptive ~~parents~~ parent(s), ~~relatives~~ relative(s), and current foster ~~parents~~ parent(s) is the responsibility of ~~the Department DHS~~. The opportunity to be heard is provided by the court to each party, including the current foster parent(s) of the child, any pre-adoptive parent(s) or ~~relatives~~ relative(s) providing for the care of the child, and the guardian ad litem. Such notice and opportunity to be heard is not to be construed as requiring any foster parent, pre-adoptive parent, or relative to be made a party to such deprived proceedings, if not currently a party to the action.

340:75-1-21. Post Adjudication Review Board (PARB)

(a) Section 1116.3 and succeeding Sections of Title 10 of the Oklahoma Statutes, mandate the establishment of review boards for each judicial district to review the case of every child adjudicated or alleged to be deprived and held in out-of-home placement. The child's court file is reviewed by the ~~board~~ local PARB at least once every six months until the court case is dismissed. The ~~board's~~ PARB's findings and ~~recommendation~~ recommendations are submitted to the court within ten days of ~~the~~ any review hearing. ~~{OAC 340:75-1-16}~~ The review includes consideration and evaluation of the appropriateness of the:

- (1) ~~the~~ goals and objectives of the treatment plan;
- (2) ~~the~~ services provided to the child, ~~parent~~ parent(s), ~~stepparent~~ stepparent(s), or other ~~adult~~ adult(s) living in the home or legal ~~guardian~~ guardian(s) or ~~custodian~~ custodian(s); and
- (3) ~~the~~ goals and objectives of the permanency plan and permanency planning.

(b) In situations where the child is alleged to be deprived and held in out-of-home placement, the PARB reviews these cases six months after removal and every six months thereafter until adjudication occurs or the child is released from out-of-home placement. The PARB's findings and recommendations are submitted to the court within ten days of any scheduled review hearing. The review includes consideration and evaluation of:

- (1) whether the continued out-of-home placement is in the best interests of the child in light of the child's need

for permanency and recognizing that permanency is in the best interests of the child;

(2) the appropriateness of continued out-of-home placement; and

(3) in the absence of a court-approved treatment and service plan, the appropriateness of the services provided to the child and any other family ~~members~~ member(s) or other ~~adult~~ adult(s) living in the home of the child.

(c) A ~~review board~~ PARB member may attend any court hearing concerning the case of any child subject to review by the PARB.

(d) The State Post Adjudication Review Advisory Board (State PARB), as set out in Section 1116.6 of Title 10 of the Oklahoma Statutes, oversees the implementation of the state post adjudication review program in coordination with the Oklahoma Commission on Children and Youth (OCCY). The ~~State Advisory Board~~ PARB makes recommendations to the courts, OCCY, the Governor, the Legislature, Department of Human Services (DHS), Office of Juvenile Affairs (OJA), and other state agencies providing services to children, regarding statutory revisions, amendments to court rules and regulations, permanency planning, foster care, and ~~child welfare~~ Child Welfare (CW) service delivery policies, guidelines, and procedures.

(e) ~~The Department DHS~~ provides the State PARB a listing of the ~~Child Welfare (CW)~~ cases that have adjudicated deprived children who have been in ~~the Department's~~ DHS custody and in out-of-home care for 15 of the most recent 22 months and identifies the cases for which ~~the Department DHS~~ has determined that a petition to terminate parental rights is not required based upon the exceptions. ~~{OAC 340:75-1-23}~~ The State PARB disseminates the listings to local PARBs for review. In those cases where the local or State PARB disagrees with ~~the Department DHS'~~ determination, the local or State PARB provides the district attorney with a recommendation of additional cases for which a petition to terminate parental rights should be filed. The State PARB forwards a copy of the recommendation to ~~the Department DHS~~.

(f) For every child adjudicated deprived pursuant to the laws of another state or territory, when the child is currently residing in Oklahoma and ~~the Department of Human Services~~ DHS has agreed to provide services to the child pursuant to the Interstate Compact on the Placement of Children or other agreement concerning the child, the PARB reviews the case. The PARB reports its findings to ~~the Department DHS~~ and may report these findings to the agency or court in the state having jurisdiction. The child and the custodian of the child may be required to be present at the ~~review board's~~ local PARB's meeting regarding the child.

(g) Any person participating in a judicial proceeding as a PARB member is presumed to be acting in good faith and in so doing, immune from any civil liability that otherwise might be incurred or imposed.

SUBCHAPTER 6. PERMANENCY PLANNING

PART 7. CASE PLANS

340:75-6-40.5. Court Report, Form CWS-KIDS-11

The ~~Court Report Form CWS-KIDS-11~~ is submitted for the initial disposition hearing, ~~a minimum of every six months thereafter~~ for review hearings held no later than six months after the date of the child's out-of-home placement and at least every six months thereafter, and every 12 months for subsequent disposition/permanency hearings held every 12 months as long as the child remains in out-of-home placement. The ~~Court Report Form CWS-KIDS-11~~ is prepared and submitted three days prior to each hearing. A copy of the ~~Court Report Form CWS-KIDS-11~~ is provided to ~~the parents~~ and discussed with ~~them~~ the parent(s). Reports, correspondence, and information provided by other professionals working with the family, including the foster ~~parent-parent(s)~~, are attached or incorporated into ~~the Court Report Form CWS-KIDS-11~~.

PART 11. PERMANENCY PLANNING AND PLACEMENT SERVICES

340:75-6-85. Child Welfare (CW) worker placement decisions and responsibilities

(a) **CW responsibilities.** The CW worker is responsible for the placement of a child who is removed from the home and placed in the ~~Department's~~ custody of the Department of Human Services (DHS) by law enforcement and court order. ~~The Department DHS~~ follows the provisions of the Multi-ethnic Placement Act of 1994 and the Interethnic Adoption Provisions of 1996 [OAC 340:75-1-9] unless the court has made a finding that the Indian Child Welfare Act applies to the child. In determining any placement for a child who has been removed from the custody of the custodial parent and placed with ~~the Department DHS~~ in emergency or protective custody, priority is given by ~~the Department DHS~~ to placement with the noncustodial parent unless such placement is not in the best interests of the child. If a determination is made by ~~the Department DHS~~ that placement with the noncustodial parent is not in the best interests of the child, the order of placement preference is consistent with Section 21.1 of Title 10 of the Oklahoma Statutes preferences, such as grandparent, person indicated by deceased parent, relative, the person in whose home the child has been living in a wholesome and stable environment, including, but not limited to, foster parent, or any other person deemed suitable by the court. If custody of the child cannot be made pursuant to these preferences, or any other person deemed suitable by the court. If custody of the child cannot be made pursuant to these preferences, the reason for such determination is specified in the agency records concerning the child. In addition, such records are made known to the court by ~~the Department DHS~~. This responsibility includes ensuring the provision of food, clothing, shelter, medical care, education, basic care, protection, and safety for the child. [10 O.S. § 7003-7.1; and OAC 340:75-6-85.1 through 340:75-6-85.4]

(b) **Appropriate placement.** ~~The Department DHS~~ has the responsibility to determine whether a placement is an appropriate placement for a DHS custody child, and to remove a child from a placement when it is in the best interests of the child. [10 O.S. § 7202(10)(a)] Every effort is made to place the child

within his or her own community, school district, or both in order to minimize the disruption for the child and ensure consistency with education. The Federal Indian Child Welfare Act (FICWA), Section 1915 of Title 25 of the United States Code, and the Oklahoma Indian Child Welfare Act (OICWA), Section 40.6 of Title 10 of the Oklahoma Statutes, define placement preferences for Indian children. [OAC 340:75-19-14] If a child is placed with a noncustodial parent, the noncustodial parent's home is considered the child's home community. Additionally, consideration is given to the ~~parents'~~ parent(s)' wishes as to the religious preference in the selection of a placement provider for the child. In order to promote stability and healthy growth of the child, it is the intent of ~~the Department DHS~~ to limit the number of times a child is moved in out-of-home placement. Consideration is given so that if reunification is not feasible or is delayed the placement made is the best available placement to provide permanency for the child. A request by a placement provider for immediate removal of a child is examined and assessed as to whether the situation can be resolved in order to prevent disruption of the placement.

(c) **Prescribed standards.** All placements utilized by ~~the Department DHS~~ are approved or licensed by specified procedures and meet prescribed standards. A custody child is not placed in a home, however temporary or closely related, prior to the provider meeting the standards as described in ~~Children and Family Services Division (CFSD) DHS~~ rules. Financial and social information is gathered, and driving and criminal background records are checked. Placements must be safe, have sufficient space to allow the child privacy, and the provider must support and participate in the child's case plan goals. All placements adhere to DHS rules such as not using physical discipline, and supporting and cooperating with the child's preferred religion and cultural choices. ~~{10 O.S. § 7209(D)(2)}~~

(d) **Child's placement preference.** The child's statements and placement preferences are considered in making case decisions and are recorded ~~in the court report on Form CWS-KIDS-11, Court Report,~~ when the child's age and developmental abilities allow. Although the child's preferences are not the sole consideration in determining placements and case plan decisions, they are evaluated as to their reasons or causes, degree of consistency and implications for the case plan goal, and permanency planning.

(e) **Court decisions regarding the child's placement.** The court cannot place a child in the custody of an individual who is subject to the Sex Offenders Registration Act or an individual living with someone subject to the Sex Offenders Registration Act. The term "individual" does not include a parent, legal guardian, or custodian of the child. The court also must inquire, prior to placing custody of a child with an individual, whether the individual has been convicted of a felony or a relevant misdemeanor, including assault and battery, alcohol or drug offenses, domestic abuse, and other charges, or has any charges pending. Prior to the custody order being issued, the individual must present an affidavit or sworn testimony to the court and must provide an Oklahoma criminal history background check. [10 O.S. § 7003-8.1(A) and (B) ~~(E)(3)~~]

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(f) **Foster home placements.** The criteria in (1) through (97) of this subsection apply to placements in a kin, paid or non-paid, foster, or therapeutic foster home.

(1) **Preplacement visit.** Whenever possible a pre-placement visit for any child five years of age or older is held with the ~~placement provider~~ foster parent(s) ~~at the placement location.~~ The worker involved in the preplacement visit makes every effort to discuss with the child how the care, supervision, and guidance, including, but not limited to, parental substitute authority, will be achieved.

(2) **Written notice of removal.** ~~Except in emergencies, when a child has been in a foster home for three months or more, written notice is provided to the foster parents, including paid and non paid kinship providers, five calendar days prior to the child being removed from the placement.~~

(32) **Foster parents may submit reports or present testimony in court.** Foster parents are entitled to provide the court with written reports or verbal testimony concerning the strengths, needs, behavior, important experiences, relationships regarding the child, and may provide information requested by the court.

(4) **Foster parent objections to removal of a child.** ~~When a child has been in the same foster home for more than six months, the foster parent has the legal right to file a written objection to the child's removal from the foster home. This objection must be filed with the court and served on the Department within five days after receipt of the notice to remove the child. Timely filing and service of the objection shall stay removal of the child pending review of the court unless DHS' stated reason for removal is:~~

(A) ~~substantial noncompliance by the placement provider with applicable DHS standards and agreements;~~

(B) ~~pending investigation of allegations of abuse or neglect of the child by a placement provider or other person residing in the placement provider's home; or~~

(C) ~~reunification with a parent with prior approval of the court.~~

(53) **Foster parents informed of hearings.** Foster parents parent(s) and the child are given adequate prior written notice by the CW worker of all court hearings, including the date, time, place of hearing, name of judge, docket number, and the right to participate, ~~if the child has resided in the foster home three months or more.~~ [OAC 340:75-1-20] The foster parents parent(s) ~~are~~ is advised of the decisions made by the court ~~in~~ with respect to the child.

(64) **Foster parents preferred placement.** When a ~~former~~ foster child reenters out-of-home care and a relative or kin placement is unavailable, the foster parent parent(s) who previously cared for the child is the preferred placement option if the placement is in the best interests of the child as well as the best interests of the other children in the foster home.

(75) **Foster parents informed of review meetings, permanency planning meetings, and special staffing.**

Foster parents are advised of any review meetings, permanency planning meetings, and special staffing, including CW's scheduled permanency planning review meetings, and their right to participate.

(86) **Previous placement information.** Foster parents are provided the opportunity to contact and communicate with a previous foster parents parent(s) for the child in order to share information about the child, if authorized by the previous foster parents parent(s). Foster parents are informed of the number of times a ~~foster~~ child has been moved and the reasons why.

(97) **Court approved treatment plan.** Foster parents are provided a copy of the court approved treatment plan.

(g) **Respect for the foster parents or placement provider providers.** ~~The CW worker's relationship with the placement provider is one of mutual respect, exchange of pertinent information, and clarity of the differences in roles and responsibilities each has with the child. The foster parent parent(s) or placement provider provider(s) is considered a professional member of the CW team and is treated with dignity, respect, and consideration. The placement provider keeps the CW worker informed~~ A mutual exchange of information, including, but not limited to, about the child's physical and emotional development, significant statements and behaviors which could affect the child's permanent plan and progress, and events in school events, and any other concern, is essential between the CW worker and the foster parent(s) or placement provider(s).

(h) **Foster parents' relationship to the child.** Foster parents provide the child's basic needs such as food, clothing, and shelter; and the child's need for nurturing, emotional support, and direction and guidance for the child's growth and development. These relationships are often close and lasting and are recorded through photographs, Life Books, the exchange of gifts and, in some cases, contact after the placement is completed. State statutes recognize foster parents as essential participants in the decisions related to the growth, development, care, protection, and treatment of a child placed in their home with whom they have established a familial relationship. [OAC 340:75-7-37]

(i) **Least restrictive.** Placements are made in the least restrictive or most home-like setting that will meet the child's individual needs and provide for the child's safety. [OAC 340:75-6-85 through 340:75-6-85.4] Section ~~7004-1.1.d-7004-1.1(2)(c)~~ of Title 10 of the Oklahoma Statutes prohibits a deprived child from being placed in an institution. The least to the most restrictive placements are:

(1) kinship home which includes:

(A) relative home; and

(B) close family relationship;

(2) regular foster home;

(3) therapeutic foster home;

(4) group home or residential child care facility; and

(5) residential psychiatric facility.

(j) **Close proximity.** Placements are made in "close proximity," that is within 40 miles from the child's parents when reunification is the case plan goal. [10 O.S. § 7003-5.3(D)(5)(b)] Exceptions can be made when the child's individual needs

and safety cannot be met in a placement within the prescribed distance of his or her own home and arrangements for transportation are made to ensure regular family visits.

340:75-6-86. Changes in child's living arrangements

(a) **Notice of changes in a child's living arrangement.** Section 7003-5.4a of Title 10 of the Oklahoma Statutes requires that ~~whenever when~~ a DHS custody child in the custody of the Department of Human Services (DHS) is moved from one location to another, ~~the Department DHS~~ must notify the:

- (1) court of jurisdiction;
- (2) child's attorney;
- (3) district attorney;
- (4) Post Adjudication Review Board (PARB); and
- (5) court-appointed special advocate (CASA).

(b) **Notification to parents.** ~~Parents~~ The parent(s), legal guardians guardian(s), or custodians custodian(s) involved with the child and court case ~~are is~~ informed of all changes in the child's living arrangements, but may or may not be informed of the address of the placement depending on the case circumstances. The child's location is also provided when needed for scheduled family visits or correspondence.

(c) **Prior court approval required to change placements after a hearing.** Child Welfare may not move a child from one placement to another without court approval if the child has already moved once since the last court hearing. A child may be moved due to an emergency, but a hearing may be conducted if requested in writing within ten days of moving the child. Court approval is not required for movement to or from a shelter due to an emergency, including a placement failure, placement disruption or other similar cause. [10 O.S. § 7003-5.4a.B 7003-5.4a(B)(1) through (3)]

(d) **Removal from foster care and required notification.** ~~In circumstances when a child is being removed from a foster home and the foster parent has requested a hearing, the worker informs the court at the hearing of the reason why the foster child is being removed from the foster home and the number of times the foster child has been moved within the foster family system. The court, in the court record, explains the reasons why the removal of a foster child from the foster home is in the best interests of the foster child. Except in an emergency, when a child has been in a foster home for three months or more, written notice is provided to the foster parent(s), including tribal, emergency, therapeutic, Developmental Disabilities Services Division (DDSD), regular and kinship care, and to the court five judicial days prior to the child being removed from the placement. The length of time applies to placement in each individual therapeutic or emergency foster care home and not placement with the therapeutic or emergency foster care agency. The Department DHS will not remove the foster child from the foster home solely on the grounds that a foster parent parent(s) has exercised substitute parental authority.~~

(1) **Foster parents' objection to removal of a child.** When a child has been in the same foster home for more than six months, the foster parent(s) has the legal right to file a written objection to the child's removal from the foster home. [10 O.S. § 7208(D)] This objection must be filed with the court and served on DHS within five judicial

days after receipt of the notice to remove the child. Timely filing and service of the objection shall stay removal of the child pending review of the court unless DHS' stated reason for removal is:

- (A) reunification with a parent(s) with prior approval of the court; or
- (B) based upon an emergency situation, that includes:
 - (i) the child's need for emergency medical or mental health treatment;
 - (ii) substantial noncompliance by the foster parent(s) with applicable contract requirements and agreements; or
 - (iii) a pending investigation of allegations of abuse or neglect of a child by a foster parent(s) or other person residing in the foster family home.

(2) **Hearing on foster parents' objection to removal of a child.** In circumstances when a child is being removed from a foster home and the foster parent(s) has filed an objection, an informal hearing on the objection is held. At the hearing the worker informs the court of the reason(s) the child is being removed from the foster home and the number of times the child has been moved within the foster family system. If the court finds DHS' decision to remove the child was arbitrary or inconsistent with the child's treatment and service plan, the court may order that the child remain in or be returned to the objecting foster parent(s)' home. If DHS' removal decision is upheld, the court explains, in the court record, why the removal of the child from the foster home is in the best interests of the child.

[OAR Docket #02-1398; filed 10-31-02]
(format accepted 11-6-02)

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES DIVISION**

[OAR Docket #02-1401]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 1. General Provisions
- 340:100-1-2 [AMENDED]
- 340:100-1-4 [REVOKED]
- Subchapter 3. Administration
- Part 1. General Administration
- 340:100-3-6 [AMENDED]
- 340:100-3-14 [NEW]
- Subchapter 5. Client services
- Part 5. Individualized Planning
- 340:100-5-56 through 340:100-5-57 [AMENDED]
- 340:100-5-57.1 [NEW]
- 340:100-5-58 [AMENDED]
- (Reference APA WF # 02-25)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Section 1415.1 of Title 10 of the Oklahoma Statutes.

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DATES:

Adoption:

September 24, 2002

Approved by Governor:

October 16, 2002

Effective:

Upon Governor's approval.

Expiration:

Effective through July 14, 2003, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Emergency rulemaking approval is requested as the Agency finds there is imminent peril to the preservation of the public health, safety, or welfare. The proposed rules alleviate that peril by requiring that: risk assessments are provided to all individuals receiving services; individuals with challenging behaviors receive due process prior to implementation of restrictive or intrusive procedures; and use of restrictive or intrusive procedures is reported and monitored.

ANALYSIS:

The rules are revised to provide oversight and guidance to staff and contract providers regarding needs of persons with challenging behaviors. The new rules emphasize prevention, planning, and oversight to reduce the use of physical restraint and other behavioral procedures that restrict the rights of individuals.

OAC 340:100-1-2 is revised to include new definitions to support new and revised rules, and definitions of words that are no longer found in Chapter 100 are deleted.

OAC 340:100-1-4 is revoked.

OAC 340:100-3-6 is revised, clarifying and strengthening the responsibilities of Human Rights Committees.

OAC 340:100-3-14 is a new section addressing responsibilities of the Statewide Behavior Review Committee to ensure that protective intervention plans comply with Department of Human Services (DHS) rules on the use of restrictive or intrusive procedures.

OAC 340:100-5-56 is revised to address safety issues in each person's life.

OAC 340:100-5-57 is revised to address planning for any sort of identified risk, rather than addressing only challenging behavior.

OAC 340:100-5-57.1 is a new section addressing requirements for reporting and monitoring the use of restrictive or intrusive procedures.

OAC 340:100-5-58 is updated including new restrictions on the use of physical management and physical restraint in community programs.

CONTACT PERSON:

Dena Thayer at (405)521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR, AS SET FORTH IN 75 O.S., SECTION 253(D):

SUBCHAPTER 1. GENERAL PROVISIONS

340:100-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following ~~meaning~~meanings, unless the context clearly indicates otherwise:

"Active treatment" means aggressive and consistent implementation of a program of specialized and generic training, treatment, and health services that is directed toward the acquisition by the individual of skills necessary to function as independently as possible.

"Adaptive equipment services" means activities which assess the need for and acquisition of equipment or products which may be customized to increase, maintain, or improve the functional capabilities of individuals with developmental disabilities. These services include consumer and provider training in the use and maintenance of equipment, as well as equipment repair. Equipment provided through this service includes:

- (A) mobility and positioning devices such as wheelchairs, travel chairs, walkers, positioning systems, ramps, wheelchair lifts, bath seats, bath lifts, specialized beds, corner chairs, or feeder chairs;
- (B) orthotic and prosthetic devices such as braces and prescribed modified shoes;
- (C) augmentative or alternative communication aids such as language boards, or electronic communication aids; and
- (D) environmental controls such as devices to turn on and off appliances, use a telephone, or open doors.

"Administrative Procedures Act (APA)" means an Oklahoma Statute defining specific procedures for the authorization of rules.

"Advanced years" means a chronological age of greater than 64 years or greater than 50 years along with a chronic or acute medical condition that is likely to significantly diminish life expectancy as certified by a physician.

"Advisory Committee on Services to Persons with Developmental Disabilities" means the ~~Committee~~ committee appointed by the Director of the Department of Human Services (DHS) which has a legislative mandate to review and make recommendations on policies and programs of the Developmental Disabilities Services Division (DDSD) to the Director and the Oklahoma Commission for Human Services.

"Advocate" means a person who speaks for or on behalf of an individual, especially when individual rights or interests are at risk.

"Age appropriate" means that aspect of normalization that reinforces recognition of an individual as a person of his or her chronological age.

"Agency action" means ~~the approval, denial, termination, suspension, or reduction of service eligibility or covered services; or notification of receipt of application and placement on a waiting list because of funding limitations.~~

"Alternative appropriate setting" means a residential setting, other than a nursing facility, in which needed habilitation services are provided. In most cases, an alternative appropriate setting is accessed through waived services the individual is determined eligible to receive commensurate with the eligibility requirements of this Chapter.

"Architectural modification services" means activities which assess the need for and provide alterations to a residence of an individual receiving services, to ensure safety, security, and accessibility. Modifications include:

- (A) ramps;
- (B) lifts such as porch, chair, and hydraulic lifts;
- (C) bathroom facilities such as roll-in showers, sink and bathtub modifications, toilet, floor urinal,

and bidet adaptations, water faucet controls, plumbing modifications, and turnaround space;

(D) kitchen facilities such as sink modifications, sink cutouts, turnaround space, water faucet controls, plumbing modifications, work surface, and cabinetry adjustments; and

(E) specialized accessibility adaptations such as door-widening, electrical wiring modifications, grab bars and handrails, automatic door openers, doorbells, voice activated, light activated, and electronic devices.

"Assessment" means the process of identifying an individual's present developmental or functional level and health status, the individual's developmental strengths and needs, the environment, and other conditions that support or impede development.

"Audiological examination and treatment services" means activities performed by a ~~licensed an~~ audiologist licensed by the State Board of Examiners for Speech-Language Pathology and Audiology which may include treatment and counseling regarding the use and care of individual hearing aids.

"Behavior objectives" ~~means short range outcome statements that specify the activity to be exhibited by the individual and the criterion against which progress is to be assessed. A behavioral objective may or may not specify an observable action of the individual that is to be modified through training.~~

"Behavior Review Committee (BRC)" ~~means the committee established to ensure that appropriate behavior interventions are being conducted and to evaluate the technical adequacy of proposed interventions which utilize Level 3 or Level 4 techniques of the Behavior Management Program Hierarchy. The committee is appointed by the facility director or area manager and its composition may vary according to the needs of the person receiving services and the nature of the proposed program, but includes at least a medical professional and a psychologist other than the person's psychologist. The committee is composed mainly of persons with a knowledge of behavior management principles and programs who are experienced in the application of such principles and programs. When the program provides for the use of psychotropic medication, a pharmacist or other professional qualified to evaluate proposals for the use of psychotropic medication is included. No professional whose proposed program is the subject of review may serve as a voting member of the review committee.~~

"Case manager" means a professional who is responsible for assuring that services to an individual are planned and provided in a coordinated fashion. Additional responsibilities include independent advocacy, brokerage, and monitoring activities with, and on behalf of, persons receiving services.

"Challenging behavior" means a behavior which, by its frequency or degree of intensity:

(A) places at risk an individual's physical safety, environment, relationships, or participation in the community; or

(B) creates a risk of involvement in civil or criminal processes.

"Commensurate Wage" ~~means wages paid to a worker with a disability based on the worker's productivity in proportion to the wages and productivity of workers without a disability performing essentially the same work in the same geographic area. Commensurate wages must be based on the prevailing wage paid to nondisabled experienced workers doing the same job.~~

"Community Integrated Employment (CIE)" means a service program which provides placement, job training, and short-term or long-term supports to assist individuals who are eligible for developmental disabilities services in achieving and maintaining employment within the community.

"Companion services" means living arrangements in which a person receiving services shares a home with a non-disabled person who may or may not be a paid provider of services to the person receiving services.

"Confidential information" means information related to a person receiving services generated by ~~the~~ Department DHS or contract providers; and observations of and discussions concerning the condition of persons receiving services, their families, guardians, or friends.

"Consumer" means a person who is a direct recipient or beneficiary of service planning and delivery. "Consumer" is synonymous with "client," "service recipient," and "individual served."

"Contract provider or agency" means an agency or individual rendering services to persons with developmental disabilities under a contractual agreement with ~~the~~ Department of Human Services DHS.

"Convalescent care" means nursing facility care following a person's release from an acute care hospital that is part of a medically prescribed period of recovery. Convalescent care is not expected to exceed an established number of days.

"DDSD" means the Developmental Disabilities Services Division, an operating unit of ~~the~~ Department of Human Services DHS.

"Deaf" means hearing loss so severe that the individual cannot communicate through oral or aural means.

"Dementia" means a degenerative disease of the central nervous system as diagnosed by a physician in accordance with the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM).

"Demonstrated need" means critical elements required by persons receiving services to prepare for or continue to lead a full and productive life in the community, which can be authorized by the DDSD case manager, in accordance with this Chapter. Needs are distinguished from wants which include things that would be nice to have. Funding for a person's wants comes from the person's own resources, natural supports, or community resources.

"Dental examination and prophylaxis" means activities of a licensed dentist which diagnose acute or chronic dental conditions, support oral hygiene through medically indicated cleansing and scale removal procedures, and prescribe training procedures promoting independence in oral hygiene for persons receiving services.

"Developmental Disability disability" means a severe chronic disability of a person which:

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(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the person attains age 22;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the areas of major life activity which are:

- (i) self-care;
- (ii) receptive and expressive language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction;
- (vi) capacity for independent living; and
- (vii) economic self-sufficiency; and

(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

"DHS" means the Department of Human Services.

"Family counseling" means activities to identify stresses within a family ~~unit~~group and to develop the skills within the family to cope with problems or stresses presented by raising a child with developmental disabilities. These activities are provided by an appropriately licensed professional or through support groups.

"Family homes" means residences maintained by individuals biologically related to a person receiving services.

"Family training" means activities designed to equip family members, significant others, and persons with developmental disabilities with knowledge and skills which allow a family member with developmental disabilities to remain in or return to his or her home.

~~**"Foster grandparents"** means volunteers who may or may not receive a stipend, are 60 years of age or older, and contribute to the provision of services to DDS consumers.~~

"Goals" means long-term categorical statements which describe what the individual is expected to achieve in a given time frame.

"Group home for developmentally disabled and physically disabled adults" means any establishment or institution other than a hotel, motel, fraternity or sorority house, or college or university dormitory for not more than 12 residents, 18 years of age or older who are developmentally disabled or physically disabled, and which offers or provides supervision, residential accommodations, food service, training and skill development opportunities designed to lead to increased independence of the residents, and supportive assistance to any of its residents requiring supportive assistance. Homes certified by DHS as foster homes, and living arrangements certified under the Adult Companion Home Certification Act, are not considered group homes.

"Guardian" means a person(s) appointed by a court as general or limited guardian of the person, general or limited guardian of property, special guardian or temporary guardian as provided by state statutes. The term does not include a person(s) appointed as guardian ad litem.

~~**"Guardian Ad Litem ad litem"** means a person(s) appointed by a court to represent the interests of an individual in a legal action.~~

"Guardianship Assessment Team" means the consumer's ~~Core Team~~core team members who are required to attend the ~~guardianship assessment~~ Guardianship Assessment Team meeting.

(A) Members of the Guardianship Assessment Team include:

- (i) the consumer;
- (ii) a personal advocate of the consumer's choice;
- (iii) consumer's family member(s);
- (iv) the consumer's case manager;
- (v) representative of the DHS Office of Client Advocacy, if the consumer is residing in a ~~Resource Center~~resource center or is a member of the Homeward Bound class;
- (vi) ~~Guardian Ad Litem~~guardian ad litem representative, if identified as the consumer's advocate;
- (vii) a physician, if the consumer resides at a ~~Resource Center~~resource center; and
- (viii) a psychologist, if the consumer resides at a ~~Resource Center~~resource center.

(B) Other ~~Team~~team members whose presence is not required at the Guardianship Assessment Team meeting may be invited to participate as ~~an~~ a Guardianship Assessment Team member, if these individuals know the consumer well and have pertinent information for determining guardianship needs. Other Guardianship Assessment Team members may include:

- (i) the consumer's primary physician, if the consumer receives community supports;
- (ii) a psychologist, if the consumer receives community services and the psychologist is a member of the ~~consumer's~~individual's Personal Support Team; and
- (iii) interested parties, such as friends, residential or vocational staff, or other contract professionals.

"Habilitation services" means goal-directed services and therapy activities designed to assist an individual with developmental disabilities to achieve greater mental, physical, and social development. Activities are based on the individual's capacity to make progressively independent and responsible decisions about social behavior, quality of life, job satisfaction, and personal relationships. The goal of habilitation services is to strengthen developmental skills and resolve personal deficits which interfere with the individual's capacity to successfully remain in his or her home or other community-based settings.

~~**"HCBS or HCBW Services"** means services funded through Oklahoma's Title XIX Home and Community Based Waiver.~~

"Homemaker services" means services which support persons receiving services in activities of daily living such as ~~self-care~~self-care, non-specialized mobility, cooking,

shopping, home maintenance, and transportation and which are performed by paraprofessional providers in the place of residence of the person receiving services.

"Human Rights Committee" means the committee charged with the responsibility for ensuring the legal and ethical rights of individuals served.

"ICF/MR" means ~~Intermediate Care Facility for the Mentally Retarded~~ an intermediate care facility for the mentally retarded which is a residential facility licensed in accordance with state law and certified by the federal government as a provider of Medicaid services to persons who have mental retardation or related conditions.

"Incapacitated" means a determination made by the court that a person is unable to provide for and make decisions for the person's own needs and safety. The term incapacitated is used to indicate full or partial incapacity.

"Individual Habilitation Plan (IHP)" means a plan of intervention developed by the interdisciplinary team based upon assessment of need. It specifies all the goals and objectives being pursued on behalf of the individual, the steps being taken to achieve them and all of the services provided by each agency. ~~The individual habilitation plan IHP is a single, consistent, and comprehensive plan that encompasses all relevant components of the individual's life. Various aspects of the plan such as education, rehabilitation, health care, and others are assigned to those persons or agencies who can best provide, or who are legally required to provide, the necessary services.~~

"Informed consent" means the voluntary consent by a person who has the legal capacity to consent after being informed of the nature, purpose, risks, and benefits of a proposed service or action.

"Intake" means the process by which an individual gains access to DDS services. Intake activities provide answers to specific service inquiries, assist in the identification of needs in times of crisis, supply information regarding the range and means of accessing available services, provide assistance as necessary in service application, facilitate eligibility determination, and provide follow-up contacts as necessary to ensure that services fulfill need.

"Integrated vocational site" means a ~~site~~ location or activity that provides regular interaction with people without disabilities, excluding service providers, to the same extent that a non-disabled worker in a comparable position interacts with others.

"Interdisciplinary Team (IDT ~~or Team~~)" means the decision-making body for service planning, implementation, and monitoring of the individual plan. Refer to definition for Personal Support Team.

"Intrusive procedure" means a procedure which impinges upon the bodily integrity of the individual. Use of intrusive procedures is regulated by OAC 340:100-5-26, 340:100-5-57, and 340:100-5-58. Intrusive procedures include, but are not limited to:

- (A) the use of injections or oral medications administered for the sole purpose of controlling behavior;
- (B) physical management or physical restraint; and
- (C) mechanical restraints for medical reasons.

"Job coach" means an individual who holds a ~~Department~~ DHS approved job coach certification and provides ongoing support services to eligible consumers in supported employment placements. Services directly support the consumer's work activity including marketing and job development, job and work site assessment, the training and assessment for the workers, job matching procedures, development of co-worker supports both natural and paid, and teaching job skills.

~~"Job sampling" means a paid situational assessment whereby a consumer performs a job at a prospective employer's integrated job site, to answer specific questions about the consumer's interests and abilities. Situational assessments adhere to the Department of Labor (DOL) regulations regarding wages. The consumer's Team determines the appropriate type and number of situational assessments for each consumer.~~

"Least restrictive alternative" means an arrangement that allows the individual opportunities to exercise choice, interact with non-disabled citizens, and participate in rhythms of life free of programmatic oversight to the extent of the individual's unique abilities.

"Long-term residents resident" means any resident of a nursing facility with mental retardation or related conditions who has continuously resided in a nursing facility for at least 30 consecutive months prior to the date of the first preadmission screening and resident review (PASRR) disposition.

"Mental retardation" means a condition which refers to substantial limitations in present functioning. Mental retardation manifests before age 18. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the applicable adaptive skill areas. ~~Adaptive skills areas are of:~~

- (A) communication;
- (B) self-care;
- (C) home living;
- (D) social skills;
- (E) use of community resources;
- (F) self-direction;
- (G) health and safety;
- (H) functional academics;
- (I) leisure; and
- (J) work.

"Non-prescription medication" means a pharmacological drug which is sold without a prescription and is prepackaged for use by the consumer and labeled in accordance with the requirements of state and federal statutes and regulations.

"Normalization" means a principle which advocates that services provided to persons with developmental disabilities are provided in accordance with commonly accepted patterns and conditions of life experienced by the general population.

"Nursing facility" means an Oklahoma Medicaid-certified institution providing skilled nursing and related services. It does not include a facility certified as an intermediate care facility for the mentally retarded.

"Nutritional services" means assessment, consultation, planning, and monitoring activities conducted by a registered dietitian.

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"Occupational therapy services" means assessment, consultation, planning, therapy, and monitoring activities conducted by a ~~registered and licensed~~ an occupational therapist licensed by the Oklahoma Board of Medical Licensure and Supervision.

"On-site intervention" means a situation in which the job coach is physically at the job site with an individual, providing job training.

"Personal Support Team (Team)" means the decision making body for service planning, implementation, and monitoring of the individual plan. The Team includes the person receiving services, his or her case manager, the legal guardian, and the person's advocate(s), if there is one, who may be a parent, a family member, a friend, or another who knows the person well. The term "Personal Support Team" replaces the term "Interdisciplinary Team."

"Physical management" means an intrusive procedure involving any physical guidance to overcome resistance or brief upper body hold to ensure safety. Use of physical management is regulated by OAC 340:100-5-57.

"Physical restraint" means an intrusive procedure in which the person is physically held to restrict movement.

"Physical Status Review" means Form DDS-7, Physical Status Review, which is a written assessment, ~~DHS Form DDS-7, which that~~ objectively identifies a consumer's functional ability to attend to activities of daily living based on past and present health history and current treatment modalities. ~~The Physical Status Review completed Form DDS-7~~ assists the consumer and the Team to identify the consumer's health care level, staff training requirements, health care coordination needs, and more in-depth assessment needs.

"Physical therapy" means assessment, consultation, planning, treatment, and monitoring activities conducted by a ~~licensed~~ physical therapist licensed by the Oklahoma Board of Medical Licensure and Supervision.

"Plan of Care" means a summary listing of services prescribed within the IHP, which indicates the frequency, duration, and cost of each service recommended for funding through Home and Community-Based Waivered Services (HCBWS). This document is not required in service planning for individuals residing in an ICF/MR or who receive services funded through funding sources other than the Home and Community-Based Services (HCBS) waiver.

"Preadmission screening and resident review (PASRR)" means the process of evaluating, reviewing, and establishing the need for nursing facility services in contrast to other services for people with mental retardation and related conditions.

"Prescription medication" means any drug ordered by a practitioner of medicine, dentistry, osteopathy, optometry, or podiatry who is licensed by law to prescribe such drug(s), which is intended to be filled, compounded, or dispensed by a pharmacist.

"Prevocational services" means services which are not job task oriented, but which are aimed at preparing an individual for paid or unpaid employment.

"P.R.N. p.r.n." means to take, or administer, a medication "as needed."

"Program coordinator" means a person employed by a DDS residential or vocational contract provider agency who is responsible for the supervision, coordination, and monitoring of services to a person receiving services provided by the contract provider agency.

"Prohibited business transactions" means:

- (A) buying or selling any item or items for money or items of trade, to a person receiving services;
- (B) trading articles by force from a person receiving services;
- (C) taking any article by force or stealing from a person receiving services;
- (D) bartering for articles or money with a person receiving services for articles or money;
- (E) borrowing money or any item of value from a person receiving services; or
- (F) accepting articles in the form of a gift from a person receiving services.

"Proper consent" means obtaining prior written approval of the individual or the legal guardian specific to the use of a particular treatment approach defined as intrusive or restrictive.

"Psychological services" means assessment, consultation, planning, therapy, behavior treatment, and monitoring activities conducted by a licensed psychologist or by a psychological assistant.

"Psychotherapy services" means assessment, consultation, planning therapy, and monitoring activities performed by a board-certified psychiatrist ~~psychiatrist~~ or licensed psychologist.

"Psychotropic medication" means a pharmacological drug used to treat a mental disorder, or any drug prescribed to stabilize or improve mood, mental status, or behavior.

"QMRP" means a Qualified Mental Retardation Professional. This is an individual who meets ICF/MR regulations as specified in Title 42 of the Code of Federal Regulations (CFR), Chapter IV, Section 483.420. ~~Basically, this~~ This requires a ~~B.A. baccalaureate~~ degree in a human services field, in addition to one year of experience serving persons with mental retardation.

"Related condition" means a severe, chronic disability [42 CFR, Section ~~483.120-435.1009~~] that:

- (A) is attributable to:
 - (i) cerebral palsy or epilepsy;
 - (ii) any other condition, including autism. Any other condition excludes mental illness (MI) that is found to be closely related to mental retardation (MR) because it results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with MR and requires treatment or services similar to those required for persons with MR;
- (B) is manifested before the person reaches age 21;
- (C) is likely to continue indefinitely; and
- (D) results in substantial functional limitations in three or more areas of major life activity, which include:
 - (i) ~~self-care~~ self-care;

- (ii) understanding and use of language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction; and
- (vi) independent living.

"Respite care services" means ~~in in-home and out-of-home~~ out-of-home activities provided for the primary purpose of temporarily relieving the family or primary caregiver from the responsibility of care giving. Providers of this service may include individual providers, foster homes, group homes, and state licensed and certified ~~ICF's/MR~~ ICF/MR, or other multi-service agencies which achieve and maintain licensure in accord with ~~State Law~~ state law and DHS ~~Policy~~ policy and fulfill contract stipulations dictating required service, treatment, and environmental standards.

"Restrictive procedure" or "restriction" means a procedure which results in the limitation of the individual's rights. Use of restrictive procedures is regulated by OAC 340:100-5-57 and 340:100-5-58. Restrictive procedures include:

- (A) limiting communication with others;
- (B) any limitation of access to:
 - (i) leisure activities;
 - (ii) the individual's own money or personal property;
 - (iii) goods or services beyond normal budgetary considerations;
- (C) any limitation of movement at home or in the community; or
- (D) any direct observation procedures, specified as a result of challenging behavior, such as continuous one-to-one staffing during times or places which would otherwise be considered private.

"Reverse integration" means ~~the mixing of a segregated setting through the introduction of non-disabled co-workers to the site.~~

"Service objectives" means ~~desired outcomes that cannot be achieved as a result of learning or training. They specify quantifiable but non-behavioral outcomes such as seizure reduction or maintenance of blood pressure within a stated range, and quality of life outcomes such as developing and maintaining social networks. They also include outcomes dependent on the behavior of staff, such as the provision of orthotic or mobility equipment, obtaining specialized assessments, or referral for alternative placement.~~

"Sheltered employment" means a service which assists workers toward achieving their vocational potential through a controlled work environment, providing worker reimbursement in accordance with individual production and the Fair Labor Standards Act (FLSA). Sheltered employment services include assessment, training, and transitional programming leading to community job placements.

"Sheltered Workshop workshop" means a facility under the direction of a nonprofit organization that provides vocational training and sheltered employment services for workers with disabilities. Sheltered workshops often subcontract with businesses to provide work for the sheltered employees and

typically pay their employees less than minimum wage, commensurate with the employee's production.

"Short-term residents resident" means any resident with mental retardation or related conditions who has resided in a nursing facility for less than 30 months prior to the date of the first PASRR disposition.

"Skilled nursing services" means nursing services in the community including preventative and rehabilitative procedures that fall within professional and legal bounds and are ordered by an attending physician. These services are prescribed and nursing plans are written for individuals as a result of the ~~interdisciplinary team~~ individual planning process and are included in the individual habilitation plan.

"Specialized foster care" means residential service option for eligible individuals with developmental disabilities between the ages of six through 17 whose primary need is placement in a family setting.

"Specialized services" means individualized services specified by the Mental Retardation Authority and listed in PASRR evaluations which, combined with services provided by the nursing facility or other service providers, results in a treatment ~~regime~~ regimen leading to the continued and ongoing enhancement of independence.

"Speech therapy" means assessment, planning, therapy, consultation, and monitoring activities provided by a licensed speech and language pathologist.

"Supplemental Security Income (SSI)" means a federal income subsidy program administered by the U.S. Social Security Administration.

"Supported employment" means competitive work in an integrated work setting with ongoing support services for consumers with severe disabilities for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of severe disabilities.

"Supported living arrangements" means a flexible array of habilitation and support services ranging from 24 hour in-home services to semi-independent living services which provides an opportunity for an adult with developmental disabilities to live in his or her own home.

"Team Leader leader" or or Unit Coordinator "unit coordinator" means a professional employed by a public or private agency who is responsible for assuring that services to an individual are planned and provided in a coordinated fashion. Additional responsibilities include advocacy, service coordination, and monitoring activities with and on behalf of persons receiving services.

"Terminal illness" means, as certified by a physician, a condition that results in a life expectancy of six months or less and requires continuous nursing care or medical supervision and treatment to address the person's physical condition.

"Transition" means the planned movement of an individual from one service setting to another, occurring as a result of ~~interdisciplinary team~~ Team recommendation and the informed consent of the consumer.

"Transportation services" means services which include acquisition of, and training in support and payment for, the use of public or private transportation.

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"**Treatment team for specialized services**" means the team whose purpose is to develop a prescribed plan of specialized services for each individual. The team is composed of the individual, guardian or advocate, nursing home representative, and other professionals and para-professionals as needed to develop a comprehensive plan of services. Additional team members might include a psychologist, physical therapist, speech pathologist, physician, and nurses nurse's aide among others. DDSD ~~OBRA~~ staff assist nursing facility based teams in plan development and implementation as needed.

"**Unpaid training**" means services in which consumers are rotated through clusters of integrated, unpaid vocational training sites in accordance with the Department of Labor regulations. Consumers do a variety of tasks which do not equal the full job description of a regular worker.

"**Vocational assessment**" means the employment service ~~vocational assessment evaluation~~, whether or not standardized procedures are employed, that identifies the unique preferences, strengths, and needs of the consumer, evaluates work skills and work behaviors, is supplemented by personal interviews and behavioral observations, and incorporates information that addresses the consumer's medical, physical, psychological, social, cultural, and educational goals and objectives, as well as present and future employment options. The assessment is updated annually or more frequently as needed.

"**Volunteer guardian**" means a concerned citizen who serves, unpaid, as guardian for a person receiving DDSD services. A volunteer guardian is appointed by the court and responsible to the court for the care of the person.

"**Volunteer guardianship coordinator**" means a DDSD staff member who is responsible for the operation of the Volunteer Guardianship Program at the local level.

"**Volunteer guardianship—program Guardianship Program**" means a program which locates volunteers to serve as guardian for persons receiving services who are determined in need of a guardian and for whom no relative or friend is available to serve in that capacity.

"**Volunteer guardianship program Guardianship Program supervisor**" means a DDSD State Office staff member who is responsible for the oversight of the program.

"**Volunteer job**" means a job in which a consumer freely participates, which is not a part of a vocational plan or requirement.

"**Ward**" means a person over whom a ~~guardianship~~ has been given has been appointed by the court.

340:100-1-4. Behavior procedures hierarchy [REVOKED]

(a) ~~Four levels of behavior intervention form the basis for the Behavior Procedures Hierarchy.~~

(b) ~~Level 1 is totally non restrictive, and Level 4 is highly restrictive.~~

(c) ~~The levels of the Behavior Procedures Hierarchy are explained in this subsection.~~

(1) ~~Level 1 procedures include only positive skill building and proactive behavior procedures. The focus of Level 1 behavior procedures is on teaching adaptive~~

~~behavior, structuring the physical and social environment to reduce maladaptive behavior, and prompting and reinforcing adaptive behavior. Level 1 procedures include:~~

- ~~(A) positive reinforcement for appropriate behavior;~~
- ~~(B) passive extinction of inappropriate behavior;~~
- ~~(C) analysis and restructuring of caregiver or provider behavior;~~
- ~~(D) environmental manipulation;~~
- ~~(E) differential reinforcement, including:
 - ~~(i) differential reinforcement of alternative behavior (DRA);~~
 - ~~(ii) differential reinforcement of incompatible behavior (DRI); and~~
 - ~~(iii) differential reinforcement of communication behavior (DRC);~~~~
- ~~(F) discrimination training;~~
- ~~(G) shaping;~~
- ~~(H) forward chaining;~~
- ~~(I) backward chaining;~~
- ~~(J) total task training;~~
- ~~(K) prompting;~~
- ~~(L) fading;~~
- ~~(M) self-management strategies including:
 - ~~(i) proactive voluntary calming, and~~
 - ~~(ii) proactive relaxation;~~~~
- ~~(N) coping skills such as negotiation or assertiveness training;~~
- ~~(O) social skills training;~~
- ~~(P) cooperation training;~~
- ~~(Q) decision training;~~
- ~~(R) sex education;~~
- ~~(S) behavioral or cognitive rehearsal; and~~
- ~~(T) relationship building.~~

(2) ~~Level 2 procedures include reactive behavior procedures that focus on restoring balance in the physical, social, emotional, or cognitive domains. Level 2 behavior procedures place responsibility on the consumer for his or her actions, when doing so is consistent with therapeutic objectives, while providing an opportunity for the consumer to learn adaptive procedures. Level 2 procedures include:~~

- ~~(A) verbal interruption;~~
- ~~(B) correction of the physical environment or the social environment;~~
- ~~(C) active extinction including:
 - ~~(i) differential reinforcement of other behavior (DRO); and~~
 - ~~(ii) differential reinforcement of low rates of behavior (DRL);~~~~
- ~~(D) reactive relaxation exercises;~~
- ~~(E) reactive voluntary calming;~~
- ~~(F) response blocking of less than 15 seconds of continuous contact;~~
- ~~(G) token system or monetary system;~~
- ~~(H) response cost with bonus;~~
- ~~(I) ushering; and~~
- ~~(J) redirection.~~

(3) Level 3 procedures require monitoring and external review by the Human Rights Committee. Level 3 procedures include:

- (A) restititional overcorrection;
- (B) non-exclusionary time out;
- (C) response cost, if no consumer rights are involved;
- (D) contingent effort;
- (E) moderate physical management procedures, such as:
 - (i) physical prompting to overcome consumer resistance;
 - (ii) correction procedures to overcome consumer resistance;
 - (iii) response blocking with more than 15 seconds of continuous contact;
 - (iv) ushering to overcome consumer resistance; and
 - (v) redirection to overcome consumer resistance; and
- (F) withdrawal of privileges, immediate to short term.

(4) Level 4 procedures are de-escalation procedures that are utilized to restore safety for the consumer and others. Level 4 behavior procedures may have a temporary suppressing effect on the maladaptive behavior in addition to the developmental escalation function of the Level 4 procedure(s). Due to the risks to the consumer involved, the consumer must be supervised at all times during the implementation of Level 4 procedures. Level 4 procedures require review by the Human Rights Committee and approval by the Statewide Behavior Review Committee. Level 4 procedures include:

- (A) exclusionary time out;
- (B) protective equipment;
- (C) manual physical restraint which:
 - (i) is never to exceed 30 minutes; and
 - (ii) includes upper body restraint, moving to safety, controlled descent, and reclined restraint; and
- (D) any risk to consumer rights or protection, such as:
 - (i) response cost;
 - (ii) restriction of consumer rights; and
 - (iii) withdrawal of consumer privileges over a long term.

(d) The behavior procedures included in each level are considered to be potentially equally restrictive.

(e) The Behavior Procedures Hierarchy provides examples only and is not intended to be exhaustive. Creative solutions to problem behaviors are always encouraged.

(f) The DDS Program Administrator for Psychological Services determines the appropriate level for a particular method of intervention, if the intervention is not included in the Behavior Procedures Hierarchy.

PART 1. GENERAL ADMINISTRATION

340:100-3-6. Human Rights Committee (HRC)

(a) Each consumer individual participating in services or programs operated by or under contract with the Development Disabilities Services Division (DDSD) is represented by a Human Rights Committee (HRC).

(1) ~~Local agency HRCs have at least three members. Members of the local HRC are not employed by an agency providing services to people with developmental disabilities and funded by DDSD or the Oklahoma Health Care Authority (OHCA). At least one member of the HRC is either a consumer of DDSD services or a family member of a consumer.~~

(2) ~~Resource Center HRC composition and practices conform to Title XIX requirements, as specified in 42 CFR, § 483.440.~~

(3) ~~Consumers served by multiple agencies funded by DDSD or OHCA are represented by the HRC of the agency providing residential supports.~~

(4) ~~Local agency HRCs develop by laws that specify:~~

- (A) ~~the consumers represented by the HRC;~~
- (B) ~~the time and location of routine meetings, no less than quarterly;~~
- (C) ~~methods to ensure consumer access to HRC members for private communication;~~
- (D) ~~time lines for review of grievances, complaints, and behavior plans which specify that behavior plans are reviewed within 30 days of the agency's receipt of the behavior plan;~~
- (E) ~~term of appointment for members; and~~
- (F) ~~routine rules of operation governing:

 - (i) selection of the chairperson; and
 - (ii) recording and distribution of minutes of the meetings.~~

(5) ~~The HRC's rules for recording and distribution of minutes of meetings include the steps listed in (A) — (D) of this paragraph.~~

- (A) ~~The minutes of each HRC meeting include:

 - (i) identification of any rights restrictions or restrictive behavior plans that were reviewed, specifying the nature of the restriction(s) or restrictive procedure(s) in each case;
 - (ii) recommendations, if any, from the HRC for each case reviewed, including a copy of the checklist or review form, if such a form was used;
 - (iii) names and titles of persons who attended;
 - (iv) other key issues discussed; and
 - (v) notation if a pattern of frequent use of restrictive procedures or frequent injury is emerging from the HRC's review of incident reports.~~

(B) ~~Each HRC distributes a copy of the form used to review the Behavior Plan, along with any other information needed to clarify the HRC's recommendation, to the DDSD case manager(s) of the consumer(s) whose Behavior Plan(s) was reviewed.~~

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- (C) ~~If issues other than a Behavior Plan were reviewed by the HRC, a copy of the minutes is distributed to the consumer's case manager, with names deleted of consumers who are not in that case manager's case load.~~
- (D) ~~Each HRC sends a complete copy of the minutes and review forms to the DDS Director of Psychological and Behavioral Supports.~~
- (b) The HRC's role and function is to ~~serve as a mechanism for provide~~ external monitoring and advocacy that is separate and apart from the provision of services and which specifically addresses the issues of protection of individual rights, program conditions, policy and procedure review, and resolution of complaints or concerns related to the protection of individual rights.
- (1) HRCs review, at least annually, each behavior protective intervention plan containing a Level 3 or Level 4 restrictive or intrusive procedure(s), as explained defined at OAC 340:100-1-4 340:100-1-2, at least annually, and advise consumers or guardians and staff each service recipient or guardian of the perceived benefits and risks to the consumer of proposed programs. The review includes an evaluation to determine whether the proposed procedures conform to DDS and provider agency policy. Consumers or guardians Individuals served or guardians retain the right to provide, refuse, or withdraw consent for proposed procedures, regardless of the recommendations of the HRC, as long as this consent does not result in the implementation of a program that does not comply with DDS policies.
- (2) ~~HRCs review and approve all research proposals involving human participants, prior to the initiation of the research. The HRC: HRCs and the DDS director of psychological and behavioral supports must review and approve all research proposals involving service recipients, prior to the initiation of the research, in accordance with the requirements of OAC 340:100-3-10.~~
- (A) ~~evaluates the potential benefits and potential risks presented to the consumers by the research proposal;~~
- (B) ~~ensures informed consent has been obtained from the consumers involved before the research begins; and~~
- (C) ~~ensures the proposal includes necessary provision to protect the anonymity of consumers participating.~~
- (3) ~~HRCs examine and act on grievances or review complaints raised by consumers service recipients or by other persons on behalf of consumers service recipients and make recommendations regarding resolution.~~
- (4) HRCs review allegations of abuse, neglect, or exploitation. Although HRCs do not coordinate or conduct abuse investigations, the agency notifies the members of the HRC that an allegation of abuse, neglect, or exploitation has been made. The HRC confirms that the agency has acted appropriately in reporting the allegation, protecting the consumer(s) individuals served, and cooperating with the investigating authorities.
- (5) HRCs review all incident reports involving emergency use of restrictive or intrusive procedures.
- (6) HRCs review and comment on provider agency policies and practices as they affect consumers individuals receiving services. The HRC's comments are provided to the governing body of the provider agency and others as determined appropriate by the governing body.
- (7) HRC members participate on at least a quarterly basis in activities designed to promote familiarity with consumers individuals served, staff, and agency practices. These activities may include, but are not limited to, home visitation, attendance at agency functions, and social or recreational events.
- (c) ~~HRC members are trained in their role and function according to DDS guidelines. The HRC may request: Local agency HRCs have at least four members.~~
- (1) ~~training from a qualified DDS trainer. Members of the local HRC are not employed by an agency providing services to individuals with developmental disabilities and funded by DDS or the Oklahoma Health Care Authority (OHCA).~~
- (2) ~~technical assistance from a DDS Area HRC or the Statewide Behavior Review Committee. At least one member of the HRC is either a recipient of DDS services or a family member of an individual receiving services.~~
- (3) One member must be a professional with expertise in areas relating to the duties of the committee, such as:
- (i) positive behavior supports and educational methodologies;
- (ii) issues involving client rights; or
- (iii) related medical or psychiatric issues.
- (d) ~~HRCs may seek assistance if their advocacy recommendations are not carried out. In a resource center or the Greer Center, HRC composition and practices conform to Title XIX requirements, as specified in Title 42 of the Code of Federal Regulations (CFR), Section 483.440.~~
- (4) ~~If essential due process is not pursued in that HRC recommendations regarding a rights restriction are not implemented, the HRC may request an Administrative Inquiry from the DDS Quality Assurance Unit.~~
- (2) ~~If essential due process is not pursued in that HRC recommendations regarding a restrictive Behavior Plan are not followed, the HRC may refer the Plan to the Statewide Behavior Review Committee.~~
- (3) ~~If the HRC becomes aware of the unapproved use of restrictive behavioral procedures, the HRC must request an Administrative Inquiry from DDS Quality Assurance Unit.~~
- (e) Individuals served by multiple agencies funded by DDS or OHCA are represented by the HRC of the agency providing residential supports.
- (f) Local agency HRCs develop by-laws that specify:
- (1) the individuals represented by the HRC;
- (2) the time and location of routine meetings, no less than quarterly;
- (3) methods to ensure access by service recipients to HRC members for private communication;

- (4) time-lines for review of grievances, complaints, and protective intervention plans which specify that protective intervention plans are reviewed within 30 days of the agency's receipt of the protective intervention plan;
 - (5) term of appointment for members; and
 - (6) routine rules of operation governing:
 - (A) selection of the chairperson; and
 - (B) recording and distribution of minutes of the meetings.
- (g) The HRC's rules for recording and distribution of minutes of meetings include the steps listed in this subsection.
- (1) The minutes of each HRC meeting include, but are not limited to:
 - (A) identification of any protective intervention plans containing rights restrictions or restrictive or intrusive procedures that were reviewed, specifying the nature of the restriction(s) or restrictive or intrusive procedure(s) in each case;
 - (B) recommendations, if any, from the HRC for each protective intervention plan reviewed, including a copy of any checklist or review form used;
 - (C) names and titles of persons who attended;
 - (D) other key issues discussed; and
 - (E) notation if a pattern of frequent use of restrictive or intrusive procedures or frequent injury is emerging from the HRC's review of incident reports.
 - (2) Each HRC distributes a copy of the form used to review the protective intervention plan, along with any other information needed to clarify the HRC's recommendation, to the DDS case manager of the individual(s) whose protective intervention plan(s) was reviewed.
 - (3) If issues other than a protective intervention plan were reviewed by the HRC, a copy of the minutes is distributed to each individual's case manager, with names deleted of individuals who are not in that case manager's case load.
 - (4) Each HRC sends a complete copy of the minutes and review forms to the DDS director of psychological and behavioral supports.
- (h) HRC members are trained, using the approved curriculum consisting only of materials approved by the DDS director of psychological and behavioral supports and the DDS director of human resource development. The HRC may receive training from:
- (1) a qualified DDS trainer;
 - (2) the Statewide Behavior Review Committee (SBRC); or
 - (3) a fully trained HRC member approved by the DDS director of psychological and behavioral supports and the DDS director of human resource development.
- (i) HRCs may seek assistance if their advocacy recommendations are not carried out.
- (1) If essential due process is not pursued in that HRC recommendations regarding a rights restriction are not implemented, the HRC may request an administrative inquiry from the DDS Quality Assurance Unit.
 - (2) If HRC recommendations regarding a protective intervention plan containing restrictive or intrusive procedures are not followed, the HRC must refer the plan to the SBRC.
 - (3) If the HRC becomes aware of the use of a restrictive or intrusive procedure(s) that is not in accordance with OAC 340:100-5-57, the HRC must request an administrative inquiry from DDS Quality Assurance Unit.
- 340:100-3-14. Statewide Behavior Review Committee (SBRC)**
- (a) **Purpose.** The Statewide Behavior Review Committee (SBRC) is established to review each protective intervention plan with restrictive or intrusive procedures to ensure that the plan complies with Development Disabilities Services Division (DDS) policy on the use of restrictive or intrusive procedures given in OAC 340:100-5-57.
- (1) The SBRC ensures that:
 - (A) each protective intervention plan complies with requirements found in OAC 340:100-5-57;
 - (B) each protective intervention plan focuses on:
 - (i) prevention;
 - (ii) education to maximize the individual's growth and skill development;
 - (iii) staff training and conduct; and
 - (iv) other positive approaches; and
 - (C) due process is provided prior to the use of a restrictive or intrusive procedure.
 - (i) Proper consents must be obtained.
 - (ii) The restrictive or intrusive procedure must be the least restrictive alternative.
 - (iii) The protective intervention plan must comply with all applicable DDS policy.
 - (iv) Educational procedures must be in place to assist the individual in restoring the restricted right(s).
 - (v) Personal Support Team (Team) participation in developing the positive protective intervention plan must be documented.
 - (2) In addition to review of protective intervention plans containing restrictive or intrusive procedures, the SBRC may:
 - (A) review protective intervention plans without restrictive or intrusive procedures if requested by a member of the Team, or to address relevant concerns of committee members or others; or
 - (B) identify systems issues and make recommendations as appropriate to the director of DDS.
- (b) **Membership.** The SBRC members are appointed by the director of DDS.
- (1) The committee is chaired by the DDS director of psychological and behavioral supports.
 - (2) Other members are appointed in writing by the director of DDS for a term of three years. Members may be re-appointed.
 - (3) An associate chair is appointed by the chair to conduct committee business in the absence of the chair.
 - (4) The SBRC includes:

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- (A) at least three professional members with expertise in areas relating to the duties of the committee, including:
- (i) positive behavior supports and educational methodologies;
 - (ii) issues involving client rights;
 - (iii) related medical or psychiatric issues; or
 - (iv) other qualifying experience as accepted by the DDS director. Documentation of members' additional credentials is maintained in the SBRC file of membership resumes;
- (B) at least two individuals who receive DDS services or are a family member, guardian, or advocate of an individual who receives DDS services; and
- (C) ex-officio, non-voting members as appropriate to assist in the business of the committee. The positive support field specialist serves as a non-voting member when presenting proposals or plans submitted by the Team.
- (5) At least one half of the voting committee members must be present to conduct business.
- (6) No professional whose protective intervention plan is the subject of review may vote on the approval of that plan.
- (7) No member may vote on an issue or recommendation if there is a professional, pecuniary, or familial conflict of interest.
- (8) Members are required to protect the confidentiality of all records and information disclosed in carrying out the duties and activities of the committee.
- (A) Each committee member is required to sign a confidentiality statement.
 - (B) Confidentiality is protected in all communications of the committee to non-members.
- (c) **Review by the positive support field specialist.** The case manager, or provider agency program coordination staff member if there is no DDS case manager, submits all protective intervention plans to the positive support field specialist for review to determine if the plan contains:
- (1) restrictive or intrusive procedures requiring approval by the SBRC; or
 - (2) any significant deviation from acceptable standards of positive behavior supports.
- (d) **Due process.** Due process is required prior to use of a restrictive or intrusive procedure, except in an emergency as defined in subsection (f) of OAC 340:100-5-57. For persons in a resource center or the Greer Center, review and approval by the resource center Behavior Review Committee (BRC) and Human Rights Committee (HRC) are required when restrictive or intrusive procedures are planned.
- (e) **SBRC minutes and tracking.** The chairperson of the SBRC must maintain:
- (1) a record of each meeting that includes:
 - (A) a summary of the disposition of each protective intervention plan reviewed;
 - (B) a record of attendance; and
 - (C) the date of the meeting; and
 - (2) a tracking system that allows for retrieval of information pertinent to:
 - (A) individual programs;
 - (B) program authors;
 - (C) types of restrictions;
 - (D) general questions regarding programming which involve restrictive or intrusive procedures; and
 - (E) matters specific to the SBRC such as attendance and protective intervention plan review activities.
- (f) **Standards for protective intervention plans.** Committee members examine each protective intervention plan developed in accordance with subsection (d) of OAC 340:100-5-57 to determine whether the plan meets all standards defined in OAC 340:100-5-57.
- (g) **Recommendations of the SBRC.** All recommendations for changes or requests for additional information are supported by a consensus of the committee.
- (1) Protective intervention plans must be modified to accommodate the recommendations of the SBRC and approved in accordance with this Section prior to implementing the proposed restrictive or intrusive procedure(s).
 - (2) Educational supports in addition to those required by the protective intervention plan may be required by the SBRC to assist the Team in maximizing the individual's growth and skill development. Recommended supports address specific educational needs of the individual or training needs of the support staff and are designed to reduce or eliminate the need for restrictive or intrusive procedures.
 - (3) Additional medical evaluation(s) may be required by the SBRC to determine if challenging behaviors are due to physical or medical conditions.
 - (4) If the Team is resistant to positive approaches and preventions, the SBRC may recommend administrative action when deemed necessary.
 - (5) The SBRC is the final approval authority for protective intervention plans that include a restrictive or intrusive procedure(s).
 - (6) SBRC approval is for no longer than one year and must be renewed annually as long as the restrictive or intrusive procedure is in place.
- (h) **Notification of the Team.** The SBRC sends a copy of the SBRC minutes and a copy of protective intervention plan review summary to the case manager. The review summary specifies whether the protective intervention plan is:
- (1) approved by a consensus of the committee;
 - (2) conditionally approved, with required information or changes to be provided within a time period specified by the SBRC;
 - (3) conditionally approved with required educational supports or staff training as specified; or
 - (4) not approved, with required information or changes to be provided within a time period specified by the SBRC. The case manager convenes the Team within ten days of receipt of the SBRC minutes and summary for review and necessary modifications to the protective intervention plan.

(i) Revisions and addenda to protective intervention plans. Changes, revisions, and addenda to protective intervention plans are conspicuously marked when re-submitted to the SBRC.

(1) If the information or revision requested by the SBRC is not provided within the time frame specified by the SBRC, the SBRC may require additional, more current information.

(2) If the Team's revision of the protective intervention plan does not contain the requested changes or information:

(A) the SBRC may request an administrative inquiry as provided by OAC 340:100-3-27 if the SBRC believes there are service deficiencies associated with the development of the protective intervention plan;

(B) the Team may request technical assistance from the positive support field specialist if they are unclear how to meet the requests of the SBRC; or

(C) the Team may request a hearing of the SBRC, when presenting the later revision, to provide an opportunity to further explain the direction taken in the protective intervention plan.

SUBCHAPTER 5. CLIENT SERVICES

PART 5. INDIVIDUALIZED PLANNING

340:100-5-56. Guidelines for staff and families Risk assessment

~~Guidelines for staff or families are developed or, if already in existence, adjusted by the Team to correct any external sources of provocation identified by the person centered assessment and to support the development of adaptive coping skills. The personal support team (Team) completes an assessment which identifies:~~

~~(1) The Team may request a consultation with appropriate professionals, if needed, in the development of guidelines: potential areas in which the individual's safety is at risk, including physical, emotional, medical, financial, or legal risks, or risk to community participation;~~

~~(2) Guidelines use only positive approaches and are included as part of the Individual Plan: the frequency and degree of potential harm to the individual or others; and~~

~~(3) If guidelines are ineffective or if behavior occurs that poses threat of serious physical harm to the person or others, the case manager calls a Team meeting to modify the guidelines or to recommend additional supports: why, when, where, and how the risk to safety may occur, including:~~

~~(A) issues such as circumstances, places, conditions, or times in the individual's surroundings;~~

~~(B) early signs, clues, or other indicators of potential safety risks;~~

~~(C) the actions and communications of the individual and others, including staff;~~

~~(D) the individual's understanding of risk;~~

~~(E) the individual's skills and concepts which impact safety risks, including:~~

~~(i) communication;~~

~~(ii) coping;~~

~~(iii) educational;~~

~~(iv) social;~~

~~(v) self-reliance;~~

~~(vi) leisure;~~

~~(vii) vocational; and~~

~~(viii) relationships;~~

~~(F) the individual's past experience;~~

~~(G) medical, psychiatric, or pharmacological issues;~~

~~(H) recent or predictable changes in the person's life; and~~

~~(I) previous incidents in which the individual's safety was at risk;~~

~~(4) discussion of previous supports, services, and strategies that have been effective or ineffective in preventing or reducing the risks; and~~

~~(5) services and supports which are needed.~~

340:100-5-57. Behavior support planning Protective intervention plan

~~(a) A behavior support plan is developed when: **Purpose.** The purpose of protective intervention is to assure the safety of the individual if physical, emotional, medical, financial, legal, or community participation issues place the individual at risk.~~

~~(1) restrictive procedures listed in Level 3 or Level 4 of the Behavior Procedures Hierarchy, OAC 340:100-1-4, are used.~~

~~(2) behaviors are dangerous or debilitating.~~

~~(3) an active, uncontrolled psychiatric condition exists, as indicated by DSM-IV diagnosis.~~

~~(b) The Team determines if a behavior support plan is needed and if sufficient information is available to develop a behavior support plan. **Elements of the protective intervention plan.** The protective intervention plan is part of the Individual Plan developed with the participation of the individual and the Personal Support Team (Team).~~

~~(1) A comprehensive functional analysis of the challenging behavior(s) is completed, which builds on information provided in the person centered assessment. **The protective intervention plan:**~~

~~(A) Data is systematically collected to document any patterns which demonstrate: addresses all the elements of the risk assessment specified in OAC 340:100-5-56;~~

~~(i) what happens prior to a behavioral episode(s);~~

~~(ii) what happens during a behavioral episode(s);~~

~~(iii) who is present;~~

~~(iv) when the behavior occurs;~~

~~(v) how often the behavior occurs;~~

~~(vi) where the behavior occurs; and~~

~~(vii) what happens after each episode.~~

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- (B) ~~Data specifies interpersonal relationship factors.~~ describes the preventative supports, services, and actions to be taken to reduce or eliminate the safety risks as needed including:
- (i) requirements or changes in the individual's environment; and
 - (ii) program and service requirements including:
 - (I) consistency of support staff;
 - (II) frequency and quality of supervision and oversight of support staff;
 - (III) communication between Team members;
 - (IV) daily activities;
 - (V) an educational plan with teaching methods for learning skills and concepts;
 - (VI) detailed instructions for staff interaction with the individual or others if necessary; and
 - (VII) recognition of early signs, clues, or other indications of potential safety risk;
- (C) ~~Data is collected to indicate how the behavior "works for" the person, including the functional outcome of the behavior.~~ describes detailed instructions and procedures to be taken by staff and Team members during a situation that places the safety of the individual or others at risk, including:
- (i) procedures that keep the individual and others who may be affected as safe as possible;
 - (ii) steps to defuse, reduce, or eliminate the harm or injury; and
 - (iii) protocols for securing assistance from other Team members or provider agency personnel;
- (D) includes education components that:
- (i) assess and identify educational objectives and specify how the objectives relate to the challenging issues;
 - (ii) describe teaching methods in sufficient detail to provide clear direction to support staff to assist the individual in learning relevant skill(s); and
 - (iii) affirm the dignity of the individual receiving services;
- (E) prescribes staff training when additional training is needed;
- (F) identifies methods and time-lines to evaluate the protective intervention plan's effectiveness;
- (G) is revised when circumstances change or when the plan is no longer effective;
- (H) treats the individual with dignity and is reasonable, humane, practical, not controlling, and the least restrictive alternative; and
- (I) is submitted to the positive support field specialist and the Human Rights Committee (HRC) for review at least annually if the plan imposes a restrictive procedure.
- (2) ~~A summary of the data analysis is completed which identifies, when possible, major environmental factors and~~
- the function(s) of the person's challenging behavior. The Team may request the services of appropriate professionals, if needed, in the development of protective intervention plans.
- (3) ~~Other types of assessments may be conducted to determine if the person has health, psychiatric, or neurological conditions that also contribute to the challenging behavior. Staff instructions regarding management of risks or challenging issues are prohibited unless developed by the Team in accordance with this Section.~~
- (4) Staff meet all training and in-service requirements set forth in OAC 340:100-3-38, including protective intervention plan training requirements given in paragraph (g)(2), OAC 340:100-3-38.1 through 340:100-3-38.4.
- (c) ~~A behavior support plan addresses:~~ **Serious risk or dangerous behavior.** If a protective intervention plan addresses challenging behaviors that create risk of physical injury or harm to the individual or others, creates a risk of involvement in the civil or criminal processes, or places at serious risk the individual's physical safety, environment, relationships, or community participation, the protective intervention plan must be developed and overseen by the Team and an appropriately licensed professional or a family trainer certified by Developmental Disabilities Services Division (DDSD) with the assistance of the positive support field specialist.
- ~~(1) prevention;~~
 - ~~(A) Information regarding the possible causes of the person's challenging behavior is included in the behavior support plan to help support staff prevent the further occurrence of challenging behavior.~~
 - ~~(B) Available information regarding the possible causes of the person's challenging behavior is used to help make major decisions such as:~~
 - ~~(i) where the person will live;~~
 - ~~(ii) with whom the person will live;~~
 - ~~(iii) the location and content of the person's day program;~~
 - ~~(iv) the specifics of day to day teaching methods;~~
 - ~~(v) what staff characteristics would probably be most appropriate to work with or teach the person receiving services;~~
 - ~~(vi) what activities the person finds interesting or engaging;~~
 - ~~(vii) the most effective approach to interacting with the person, including style, tone of voice, and content; and~~
 - ~~(viii) individualized pro-active procedures designed to reduce the likelihood of problem behaviors.~~
 - ~~(2) crisis intervention. The behavior support plan includes specific instructions for staff to:~~
 - ~~(A) defuse or calm potentially disruptive or dangerous episodes, and~~
 - ~~(B) take action that keeps the person and others as safe as possible if the person's behavior becomes dangerous or highly disruptive; and~~

(3) ~~long-term change in behavior. A behavior support plan describes what is being done to help the person make long-term changes in his or her behavior and includes provisions to teach the person alternative, socially appropriate behavior(s) that serve the same function as the challenging behavior.~~

~~(A) If the person has been subjected to physical or sexual abuse, he or she may receive counseling or other mental health services to deal with this issue.~~

~~(B) A person who has learned to use self-injurious behavior as a primary means of communication is taught other, more appropriate forms of communication.~~

~~(C) Training methods are included to develop pro-social skills and coping skills.~~

~~(D) Routine "boiler-plate" procedures, which are not individualized to meet the specific characteristics of the person, are not used.~~

~~(d) The behavior support plan provides a specific method to evaluate the behavior support plan's effectiveness in assisting the person to achieve the outcomes identified in the Individual Plan. **Restrictive or intrusive procedures.** If the Team determines that restrictive or intrusive procedures, as defined in OAC 340:100-1-2, are essential for safety, the Team must develop a protective intervention plan with the assistance of a DDSD positive support field specialist.~~

(1) In addition to the requirements of subsection (b) of this Section, each protective intervention plan containing a restrictive or intrusive procedure must:

(A) include sufficient justification for the use of a restrictive or intrusive procedure, including:

(i) current information on the severity of the problem;

(ii) a summary of relevant incident reports over the last six months; and

(iii) any other related information;

(B) address any limitations placed on the individual's access to goods, services, and activities, and document the Team's plan to restore access;

(C) include instructions to staff on how to:

(i) calm the individual during dangerous or disruptive episodes;

(ii) take appropriate action to protect the individual, staff, and others when the individual's behavior is dangerous;

(iii) call for assistance when necessary; and

(iv) prevent the misuse of restrictive and intrusive procedures; and

(D) collect and report data for the prescribing physician as required by OAC 340:100-5-26.1; and

(E) include a description of methods to help the individual develop skills that serve the same function as, or reduce or eliminate the possibility of, the dangerous behavior or serious risk. These methods must be individualized and must provide clear direction to support staff to develop the individual's pro-social and coping skills.

(2) The Team must submit each protective intervention plan containing a restrictive or intrusive procedure to the HRC and the Statewide Behavior Review Committee (SBRC).

~~(e) The person or legal guardian participates in the development of the behavior support plan. **Physical management.** Physical management, as defined in OAC 340:100-1-2, is used only to prevent physical injury. Any protective intervention plan which includes a physical management component requires that the Team:~~

(1) identify if the individual has any health concerns related to the use of physical management or any other intrusive method(s) proposed;

(2) ask the individual's physician or the College of Pharmacy to assess whether the current medication regimen would pose any risk for the individual under the stress of the physical management procedure(s);

(3) include in the planning sessions a DDSD-approved trainer of physical management procedures.

(A) The trainer:

(i) makes recommendations about the effectiveness and safety of the physical management procedure(s) in particular environments;

(ii) assists the Team in identifying alternative approaches when standard procedures do not seem appropriate for the individual or the situation; and

(iii) identifies existing physical obstacles to the implementation of a procedure(s) for particular staff members.

(B) The Team includes the trainer's recommendations in the physical management component;

(4) identify any situation(s) in which physical management procedures cannot be used because such use would be unsafe or ineffective;

(5) comply with paragraphs (1) through (5) of subsection (f) of this Section; and

(6) submit the protective intervention plan to the SBRC or the resource center Behavior Review Committee (BRC) in accordance with OAC 340:100-3-14. The SBRC or resource center BRC notifies the Team either:

(A) to proceed with implementation of the protective intervention plan; or

(B) that the physical management component is not approved and must be redrafted or removed pursuant to recommendations.

~~(f) Restrictive procedures, as defined in the Behavior Procedures Hierarchy, OAC 340:100-1-4, may be included in an Individual Plan if necessary, in accordance with the requirements given in this paragraph. **Emergency intervention.** Emergency intervention is the use of a restrictive or intrusive procedure(s) not included in a protective intervention plan in response to an unanticipated and unpredictable situation or event or the sudden occurrence of an event so severe and dangerous that urgent action precludes less restrictive measures. Physical management, defined in OAC 340:100-1-2, is used only during emergencies to ensure physical safety and prevent injury.~~

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(1) Persons are not allowed to injure themselves or others as a result of the sequential implementation of the behavior support plan or the behavior procedures hierarchy. Emergency intervention cannot be used as a substitute for positive approaches or a protective intervention plan.

(2) ~~The person's team makes continuous attempts to fade the use of restrictive procedures as the person gains control and the challenging behavior subsides. Emergency intervention is used for no longer than is necessary to eliminate the clear and present danger of serious physical harm to the individual or others.~~

(A) ~~If substantial progress is not realized within four months of the initiation of a restrictive behavioral procedure, the team meets to develop alternative approaches and to evaluate the current program. The rationale for continuing or changing the program is documented.~~

(B) ~~If progress is made such that a restrictive procedure(s) is not needed for a six month period, the team meets to remove that procedure from the behavior plan.~~

(3) When restrictive procedures, Levels 3 and 4 of the Behavior Procedures Hierarchy, OAC 340:100-1-4, are included in a behavior support plan, due process is required. Physical management must be terminated as soon as the person is calm or the threat has ended and must never exceed two minutes at a time.

(A) ~~For persons in a public ICF/MR, review and approval by the Resource Center Behavior Review Committee (BRC) and Human Rights Committee (HRC) are required when Level 3 or Level 4 procedures are planned.~~

(B) ~~For persons receiving community services:~~

(i) ~~the HRC of the provider agency reviews the behavior support plan in accordance with OAC 340:100-3-6.~~

(ii) ~~review and approval of the Statewide Behavior Review Committee (SBRC) are required for behavior support plans containing Level 4 procedure(s).~~

(I) ~~Behavior support plans must be revised to accommodate the recommendations of the SBRC when approval is contingent upon revision of the behavior support plan.~~

(II) ~~All staff training supports recommended by the SBRC must be in place prior to the implementation of Level 4 procedures.~~

(iii) ~~HRC and SBRC reviews occur within 45 days of submission of the Behavior Plan to the committee.~~

(C) ~~Emergency approval of a behavior support plan may be obtained by a phone poll of the members of the appropriate reviewing committee, as specified in this paragraph, or from the committee chairperson. Emergency approval is effective for no longer than 45 days.~~

(D) ~~Behavior support plans with restrictive procedures must include information on the severity of the~~

~~behavior and the rationale for the particular restrictive procedure.~~

(E) ~~It is the psychologist's responsibility to explain the procedure(s) used and to obtain consent.~~

(4) When responding to an emergency, no one may authorize or use an amount of force that exceeds that which is reasonable and necessary under the circumstances to protect the person or others.

(5) Anyone who has reason to believe that abuse has occurred is responsible to contact the appropriate authorities.

(g) The provider agency has a standard protocol to follow in situations in which the person's behavior becomes dangerous or highly disruptive. **Expedited approval of restrictive or intrusive procedures.** After the first use of an emergency restrictive or intrusive procedure, if the Team in consultation with the positive support field specialist determines that the use of a restrictive or intrusive procedure must be continued to ensure the safety of the individual or others, the positive support field specialist or the DDS director of psychological and behavioral supports may provide temporary immediate approval of continued use of restrictive or intrusive procedures.

(1) ~~The provider agency's protocol requires that each emergency use of a Level 4 procedure, as defined in OAC 340:100-1-2, is reviewed by the person's team and the HRC to ensure that the use of the Level 4 procedure was reasonable and the least restrictive alternative available. The case manager contacts the positive support field specialist to request expedited approval of restrictive or intrusive procedures to protect the individual or others from serious physical harm.~~

(A) ~~An incident report is completed whenever a Level 4 procedure(s) is used. The report includes, at a minimum a description of the:~~

(i) ~~circumstances leading to the use of the Level 4 procedure(s), including all procedures attempted prior to using the Level 4 procedure(s);~~

(ii) ~~Level 4 procedure(s) used; and~~

(iii) ~~outcome of the incident, including any physical harm or damage caused.~~

(B) ~~The agency program coordination staff:~~

(i) ~~reviews the incident report;~~

(ii) ~~completes a written evaluation which:~~

(I) ~~indicates whether the Level 4 procedure(s) was implemented according to the behavior support plan;~~

(II) ~~indicates whether the use of the Level 4 procedure(s) was justified; and~~

(III) ~~includes recommendations and a description of actions taken; and~~

(iii) ~~sends the evaluation, with a copy of the incident report, to the agency HRC and the DDS case manager.~~

(C) ~~The DDS case manager:~~

(i) ~~reviews each report received for persons in his or her caseload;~~

- (ii) ~~completes a monthly summary of all Level 4 procedures used for persons in his or her caseload, which describes:~~
 - (I) ~~systems concerns or recommendations;~~
 - (II) ~~specific recommendations; and~~
 - (III) ~~planned interventions;~~
 - (iii) ~~takes necessary action to address the identified issues; and~~
 - (iv) ~~submits the summary to the DDS Director of Psychological and Behavioral Supports.~~
 - (D) ~~The DDS Director of Psychological and Behavioral Supports:~~
 - (i) ~~reviews the monthly summaries from all case managers;~~
 - (ii) ~~maintains a record of these summaries; and~~
 - (iii) ~~takes further action(s) as needed to ensure proper use of Level 4 procedures.~~
 - (I) ~~If problems are noted, a Quality Assurance Administrative Inquiry may be requested.~~
 - (II) ~~If it appears that inappropriate use of Level 4 procedures has occurred, approval for Level 4 procedures may be suspended.~~
 - (III) ~~If it appears that abuse has occurred, the authorities charged by law with the investigation of alleged abuse are notified.~~
- (2) ~~Personal restraint is used only in emergencies to ensure safety and prevent injuries. After the first emergency use of personal restraint, the Team must develop a plan to address the issues, including analysis of the factors contributing to the emergency, as explained in OAC 340:100-5-55. The positive support field specialist approves or denies the request for use of emergency interventions using Form DDS-43, Protective Intervention Plan Review.~~
- (A) ~~If the expedited request is approved, the positive support field specialist assists the Team in assuring that needed structure and training are in place for safe and proper implementation of the emergency interventions.~~
 - (B) ~~Expedited approval of use of emergency interventions lasts no longer than 45 days.~~
- (3) ~~The use of emergency restrictive procedures three times in any six month period requires that the team review and modify the Individual Plan. Form DDS-42, Request for Expedited Approval of Restrictive Procedure(s), must provide sufficient information to demonstrate that positive supports were attempted, and the danger of severe harm still exists. At a minimum, required information includes all incident reports from the last three months, with details on the harm caused and other indications of severity, as well as a description of existing positive supports and services.~~
- (4) ~~Adaptation necessary to implement the provider agency's general intervention strategy for a specific person is detailed in the Individual Plan including as appropriate: A trainer of the DDS-approved physical~~

~~management procedures provides training regarding the authorized intrusive procedure(s).~~

- (A) ~~the types of prompts or guidance most effective in calming the person; and~~
- (B) ~~conditions under which additional staff are needed to keep everyone safe if the person's behavior becomes aggressive.~~

~~(5) To continue using the temporarily approved restrictive or intrusive procedures, the Team must submit, within 25 days following the approval, a protective intervention plan which incorporates the requested procedures. If the submitted protective intervention plan does not receive SBRC approval, the SBRC may extend the expedited approval if the committee determines that conditions warrant extension for a maximum of an additional 45 days.~~

340:100-5-57.1. Reporting and monitoring the use of restrictive or intrusive procedures or emergency interventions

~~(a) The personal support team (Team) and the Human Rights Committee (HRC) review any use of an intrusive procedure, other than medication previously approved in accordance with OAC 340:100-5-26.1, or an emergency intervention to ensure that the use was reasonable, necessary, and consistent with the protective intervention plan or in accordance with subsection (f) of OAC 340:100-5-57.~~

~~(1) Form DDS-46, Incident Report, is completed by the provider whenever an intrusive procedure or emergency intervention is used. The report includes, at a minimum, a description of the:~~

- (A) ~~circumstances leading to the use of the intrusive procedure(s) or emergency intervention(s), including all procedures attempted prior to using the intrusive procedure or emergency intervention;~~
- (B) ~~intrusive procedure or emergency intervention procedure(s) used; and~~
- (C) ~~outcome of the incident, including any physical harm or damage caused.~~

~~(2) The provider agency program coordination staff:~~

- (A) ~~reviews Form DDS-46;~~
- (B) ~~completes a written evaluation which:~~
 - (i) ~~indicates whether:~~
 - (I) ~~the intrusive procedure(s) was implemented according to the protective intervention plan; or~~
 - (II) ~~the emergency intervention(s) complied with the requirements of subsection (f) of OAC 340:100-5-57;~~
 - (ii) ~~indicates whether the use of intrusive procedure(s) or emergency intervention was reasonable and necessary; and~~
 - (iii) ~~includes recommendations and a description of actions taken; and~~

~~(C) in addition to the requirements of OAC 340:100-3-34, sends the evaluation and a copy of Form DDS-46, to the individual's HRC, the Developmental Disabilities Services Division (DDSD) case~~

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manager, and the positive support field specialist within 72 hours following the incident.

(b) The DDS case manager:

- (1) reviews each Form DDS-46 and program coordinator evaluation received for persons in his or her caseload;
- (2) ensures that the Team meets within five days of receipt of Form DDS-46 documenting use of physical management or emergency intervention to insure that the use was reasonable and the least restrictive alternative available;
- (3) completes a monthly summary of all restrictive or intrusive procedures, p.r.n. psychotropic medication usage, or emergency interventions used for persons in his or her caseload, which describes systems concerns, recommendations, and planned interventions;
- (4) takes necessary action to address the identified issues; and
- (5) sends the monthly summary to the DDS director of psychological and behavioral supports.

(c) The DDS director of psychological and behavioral supports and the positive support field specialist:

- (1) review the monthly summaries from all case managers;
- (2) maintain a record of these summaries; and
- (3) take further action(s) as needed to ensure that requirements given in this Subchapter are followed.

(A) The positive support field specialist may be assigned to provide assistance to the Team.

(B) If problems are noted, an administrative inquiry in accordance with OAC 340:100-3-27.1 may be requested.

(C) If it appears that use of restrictive or intrusive procedures or emergency intervention has occurred in violation of policy requirements, approval for use of physical management or emergency intervention may be suspended by the DDS director of psychological and behavioral supports pending review by the Statewide Behavior Review Committee (SBRC) in accordance with OAC 340:100-3-14.

(D) If it appears that abuse or neglect has occurred, the authorities charged by law with the investigation of alleged abuse are notified.

(E) The DDS director of psychological and behavioral supports may require additional staff training or supports.

340:100-5-58. Prohibited procedures

(a) Corporal punishment, defined as the application of painful stimuli to the body as a penalty including, but not limited to, hitting, pinching, or other infliction of pain, is prohibited.

(b) Verbal abuse, defined as shouting, screaming, swearing, name calling, threatening, making demeaning gestures, or any other activity damaging to a person's self respect, is prohibited. The use of words, sounds, or other forms of communication to humiliate, intimidate, or cause fear, embarrassment, shame, or

degradation to the person receiving services is prohibited, including shouting, screaming, swearing, name calling, threatening, making demeaning gestures, and any other activity damaging to a person's self-respect.

(c) Seclusion, defined as the placement of a person alone in a locked room, is prohibited.

(d) Totally enclosed cribs are prohibited.

(e) Persons receiving services do not discipline other people receiving services.

(f) Mechanical restraints are prohibited, except as a medical restraint when absolutely necessary to promote healing or prevent injury during or following a medical procedure. Aversive conditioning procedures, such as the application of unpleasant, startling, or painful stimuli that have a potentially noxious effect, including shock, ammonia, or Tabasco sauce, are prohibited.

(1) Medical mechanical restraints are prescribed by a physician.

(2) Physician orders for medical mechanical restraints are time limited to:

(A) 12 hours for a person served in a public ICF/MR.

(B) 72 hours in programs other than an ICF/MR, unless a longer period is authorized by the physician and reviewed by the Human Rights Committee in advance.

(3) Exceptions to the prohibition of the use of mechanical restraints may be approved in writing by the division administrator.

(g) Aversive conditioning procedures, defined as the application, contingent upon exhibition of maladaptive behavior, of unpleasant, startling, or painful stimuli that have a potentially noxious effect, such as shock, ammonia, or Tabasco sauce, are prohibited.

Withholding meals, breaks, sleep, or the opportunity to maintain personal hygiene is prohibited.

(h) Withholding meals, breaks, sleep, or the opportunity to maintain personal hygiene is prohibited. Involuntary forfeiture of money or personal property is prohibited.

(i) Forfeiture of money or personal property is prohibited, except in the case of an agreement which is: Physical restraint procedures are prohibited in community services.

(1) made to compensate others for intentional damages; and

(2) approved in advance by the case manager, the HRC, and the individual or guardian.

(j) Use of exclusionary time out or time out rooms is prohibited, except by written permission of the director of the Developmental Disabilities Services Division (DDS) for specific individuals residing at the Greer Center.

(k) Face-down physical restraint is prohibited.

(l) Mechanical restraints are prohibited, except as a medical restraint when absolutely necessary to promote healing or prevent injury during or following a medical procedure.

(1) Medical mechanical restraints are prescribed by a physician.

(2) Physician orders for medical mechanical restraints are time-limited to:

(A) 12 hours for a person served in a resource center.

(B) 12 hours in programs other than a resource center or the Greer Center, unless a longer period is authorized by the physician.

(3) Use of mechanical restraints is reviewed by the DDS registered nurse every 24 hours.

(4) Exceptions to the policy regarding the use of mechanical restraints may only be approved in writing by the director of DDS or designee following review and approval in accordance with OAC 340:100-3-14.

[OAR Docket #02-1401; filed 10-31-02]
(format accepted 11-6-02)

**TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES**

[OAR Docket #02-1419]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 10. Advanced Unlicensed Assistive Personnel
485:10-10-8. Recertification [AMENDED]

AUTHORITY:

Oklahoma Board of Nursing; 59 O.S. § 567.3a13

DATES:

Adoption:

September 24, 2002

Approved by Governor:

October 10, 2002

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2003, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

A compelling public interest requires an emergency rule revision to ensure an advanced unlicensed assistive person applying for recertification by the Oklahoma Board of Nursing is safe to practice as evidenced by recent employment as an advanced unlicensed assistive person.

ANALYSIS:

The rules addressing the recertification of advanced unlicensed assistive persons (AUA) are addressed in 485:10-10-8. These rules require an AUA applying for recertification by the Oklahoma Board of Nursing to submit a completed application for recertification, and documentation demonstrating one of the following: successful completion of the written and core skills certification exam (by taking the exam within the 24 months immediately preceding renewal or by documentation initial certification as an advanced unlicensed assistant within the 24 months immediately preceding renewal),

OR documentation successful completion of 12 hours of clinical inservice appropriate to the AUA role within the previous 24 months, OR by submitting notarized verification of employment as an AUA in an acute care setting for a minimum of 12 months.

The requirements of notarized verification of employment as an AUA in an acute care setting for a minimum of 12 months should include the employment has occurred within the 24 months immediately preceding renewal to ensure the AUA has recent supervised experience in the AUA role.

CONTACT PERSON:

Patrice Greenawalt, RN, MS, Associate Director for Nursing Practice, Oklahoma Board of Nursing, 2915 N. Classen, Suite 524, Oklahoma City, OK 73106; (405) 962-1800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S. § 253(D):

SUBCHAPTER 10. ADVANCED UNLICENSED ASSISTIVE PERSONNEL

485:10-10-8. Recertification

(a) Certification as an advanced unlicensed assistive person shall be renewed every two years in accordance with the schedule published by the Board.

(b) The application for recertification must be completed, signed and accompanied by the established fee before a new certificate is issued.

(c) The application for recertification must be accompanied by one of the following:

(1) notarized verification of employment as an AUA in an acute care setting for a minimum of 12 months within the previous 24 months immediately prior to renewal of AUA certification, or

(2) documentation verifying successful completion of twelve hours of clinical inservice appropriate to the AUA role within the previous 24 months; or

(3) rewriting the certification examination with a passing score, both the written and core skills portions of the exam, within the 24 months immediately preceding renewal of AUA certification; or

(4) documentation verifying initial certification as an AUA within the 24 months immediately prior to renewal of AUA certification.

(d) The fee for renewal of the certificate shall be established by the Board.

[OAR Docket #02-1419; filed 11-5-02]
(format accepted 11-12-02)

Preemptive Adoptions

The Commission for Human Services may adopt new rules, or amendments to or revocations of existing rules, on a preemptive basis if adoption of such rules "is required by federal law, federal rules, a state law enacted pursuant to federal law or federal rule, or order of a court" AND if "the imposition of a financial penalty, or a reduction, withholding, or loss of federal funds" will result if such rules are not immediately adopted. The Commission may promulgate such preemptive rules, provided the Governor first approves the rules.

Preemptive rules are effective immediately upon approval by the Governor or on a later date specified by the Commission in the preamble of the preemptive rule document. A preemptive rule is "considered to be a permanent rule and . . . remain[s] in . . . effect unless and until specifically disapproved during the first thirty (30) calendar days of the next regular legislative session following promulgation" [75 O.S., Section 250.6(C)].

Preemptive rules are published in the *Oklahoma Administrative Code*, along with a source note entry that references the *Register* publication of the preemptive action.

For additional information on the preemptive rulemaking process, see 75 O.S., Section 250.6.

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 50. FOOD STAMP PROGRAM

[OAR Docket #02-1399]

RULEMAKING ACTION:

PREEMPTIVE adoption

RULES:

Subchapter 7. Financial Eligibility Criteria

Part 1. Resources

340:50-7-1 [AMENDED]

(Reference APA WF #02-24)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Title IV of Public Law 107-171, Sections 4107 and 4401.

DATES:

Adoption:

September 24, 2002

Approved by Governor:

October 1, 2002

Effective:

Immediately upon Governor's approval

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The purpose of the proposed rule is to simplify the definition of resources to comply with new federal statutory requirements as mandated by the Food Stamp Reauthorization Act of 2002. OAC 340:50-7-1 is revised, increasing the resource limit for households with a disabled member from \$2,000 to \$3,000 and updating out-of-date terms.

CONTACT PERSON:

Dena Thayer at (405)521-4326

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING PREEMPTIVE RULES ARE
CONSIDERED PROMULGATED AND EFFECTIVE**

**UPON APPROVAL BY THE GOVERNOR AS SET
FORTH IN 75 O.S., SECTION 250.6(B) (6):**

SUBCHAPTER 7. FINANCIAL ELIGIBILITY CRITERIA

PART 1. RESOURCES

340:50-7-1. Resources considered

Eligibility must be denied or terminated if the following non-exempt resources ~~and non-liquid assets~~ described in OAC 340:50-7-3 ~~for households~~ exceed: \$3,000 for all households with a member who is disabled [OAC 340:50-5-4] or 60 years of age or older, or \$2,000 for all other households. These resource standards are applied to all applicant households except those where all members are recipients of ~~AFDC~~ Temporary Assistance for Needy Families (TANF). Households where all members are recipients of ~~AFDC~~ TANF are considered to meet the resource standards. The household's resources at the time the face-to-face interview is conducted must be used to determine if the household meets resource standards. The worker reviews with the applicant any resources reported on the application, inquires if any resources have been obtained since the application was filed, and verifies all liquid and non-liquid resources which appear to be questionable or are inconsistent with other information reported on the application or other applications.

[OAR Docket #02-1399; filed 10-31-02]

Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register*, and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code*.

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

TITLE 1. EXECUTIVE ORDERS

1:2002-12.

EXECUTIVE ORDER 2002-12

I, Frank Keating, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American flags and Oklahoma flags on State property at half staff until 5:00 p.m. on Monday October 28, 2002, to honor Senator Paul Wellstone of Minnesota, who died on October 25, 2002. A former college professor, Senator Paul Wellstone was first elected to the United States Senate in 1990 and was reelected in 1996.

This Executive Order shall be forwarded to the Director of the Department of Central Services who shall cause the provisions of this Order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 25th day of October, 2002.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Frank Keating

ATTEST:
Kathy Jekel
Acting Assistant Secretary of State

[OAR Docket #02-1397; filed 10-28-02]
